

SUPREME COURT OF INDIA

New Horizon Sugar Mills Ltd

Vs.

Govt. of Pondicherry

C.A.No.6673-6674 of 2009

(Altamas Kabir and J.Chelameswar,J.)

27.09.2012

JUDGMENT

Altamas Kabir,J.

1. Several Special Leave Petitions (now Civil Appeals) were filed in this Court against the common judgment and order dated 27th March, 2007, passed by the Madras High Court, including Writ Appeal Nos.1788 1919 of 2005, 1142 to 1144, 1209, 1342 to 1345 of 2006, 293 of 2007 and W.P.Nos.44991, 45805 of 2006 1460 of 2007. Of the said appeals, we are concerned with Writ Appeal Nos.1144 of 2006 and 293 of 2007, which are the subject matter of Civil Appeal Nos.6673-6674 of 2009, filed by M/s New Horizon Sugar Mills Ltd.

2. As will be evident from the various writ petitions and writ appeals filed by the various parties, there are several skeins running through the fabric of the matter before us. The main issue, however, relates to the challenge thrown to G.O.Ms.No.12 dated 18.2.2006 issued by the Department of Revenue and Disaster Management, Government of Pondicherry, under powers conferred under the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (Act 1 of 2005), ordering attachment of properties acquired by Pondicherry Nidhi Ltd.

3. For a proper understanding of the background in which the said G.O. came to be issued, it is necessary to set out, in brief, the facts of the case.

4. The lis between the parties to these appeals can be traced back to the credit facilities availed of by the Appellant, M/s New Horizon Sugar Mills Pvt. Ltd., from the Indian Bank, Pondicherry, to the tune of Rs.26,50,00,000/-. The Directors of the Mill, viz., Shri V. Kannan and Shri V. Baskaran, stood as guarantors for repayment of the loan and offered their personal properties as collateral securities. As the Appellant Mill defaulted in payment of the loan amount, the Bank, after declaring the loan account of the Mill to be a “non-performing asset”, initiated proceedings for recovery by issuing notice under Section 13(2) of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (“SARFAESI Act”). The said notice was challenged by the Appellant by filing Writ Appeal No.33700 of 2004, before the Madras High Court. By order dated 6th December, 2004, the said Writ Appeal was disposed of with a direction to the Appellant Mill to repay the entire loan amount in three instalments.

5. In the same order, the Court also indicated that in case the Appellant defaulted in payment of the instalments, the Bank could proceed against the Appellant Mill, in accordance with law. Since the Appellant Mill committed default even in payment of the first instalment, the Bank proceeded further and under the provisions of Sub-Sections (2) and (4) of Section 13 of the SARFAESI Act took possession of the property offered as security and also initiated steps for sale of the same by auction. In the auction proceedings, M/s E.I.D. Parry (India) Ltd. (“Parry Ltd.”) was the successful bidder. The said auction was challenged by several other banks and financial agencies to safeguard and protect their respective claims against the Mill. On 12th July, 2005, all the Writ Petitions, including the one filed by the workers/employees of the Appellant Mill, were dismissed. In respect of the Writ Petition filed by Pondicherry Nidhi Ltd. (PNL) Depositors Welfare Association, the High Court directed the Association to work out their remittance under the provisions of the Reserve Bank of India Act (“RBI Act”) as also Act 1 of 2005.

6. On receiving the Sale Confirmation Letter from the Bank, Parry Ltd. remitted their entire balance amount and fulfilled all other formalities for getting the Sale Certificate registered in its favour. At the same time, on the basis of a complaint received from one of the depositors, alleging that Shri V. Kannan and Shri V. Baskaran, said to be the major shareholders of M/s PNL Nidhi Ltd. as well as being the Directors of the Appellant Mill, had misappropriated a sum of Rs.12.5 crores belonging to M/s PNL Nidhi Ltd. and diverted the same for their own trade, the Chief Judicial Magistrate, Pondicherry, ordered attachment of various properties standing in their names and in the name of one Sivapriyal. This was followed by the Government Order, being G.O.Ms.No.12 dated 18.2.2006, ordering attachment of the properties acquired by M/s PNL Nidhi Ltd. Inasmuch as, by virtue of the said orders of attachment, M/s Parry Ltd. could not get the Sale Certificate registered in respect of the property auctioned, it filed Writ Petition No.6453 of 2006 for quashing the said G.O.Ms.No.12 dated 18.2.2006 and for a direction to the District Registrar, Registration Department, Pondicherry, to register the Sale Certificate in their favour with regard to the properties in which they had succeeded in the auction sale. The Indian Bank also filed Writ Petition No.5389 of 2006 for the same relief so that they could comply with the provisions of the SARFAESI Act for registering the Sale Certificate in favour of M/s Parry Ltd. The Appellant Mill filed Writ Petition No.1897 of 2006 for an appropriate direction to the Indian Bank to return to them such sums as would be due from out of the total sale consideration

after deducting the dues of the Bank incurred as on 1st January, 2005, the date on which possession of the property in question was taken over and for return of the remaining documents pertaining to the movable and immovable properties belonging to the Appellant after satisfying the Bank's charge. The Appellant Mill filed another Writ Petition No.8797 of 2006 challenging the validity of G.O.Ms.No.12 dated 18.2.2006. Several other Writ Petitions were filed by Shri V. Kannan and Shri V. Baskaran and M/s Indian Renewable Energy Development Agency Ltd. ("IREDA"), New Delhi, and M/s Arunachalam Sugar Mills Ltd., Pondicherry, also filed several Writ Petitions challenging the validity of the aforesaid Government Order.

7. A learned Single Judge of the Madras High Court took up the Criminal Revision Petition No.1352 of 2005 filed by the Bank questioning the Order dated 18th February, 2005, passed by the Chief Judicial Magistrate in Crime No.31 of 2004, along with various Writ Petitions filed by different parties, and by his order dated 23rd August, 2006, the learned Judge lifted the order of attachment passed in respect of the properties in question and also directed the District Registrar, Registration Department, Pondicherry, to register the Sale Certificate issued in favour of M/s Parry Ltd. The learned Single Judge further directed the Appellant (Writ Petitioner in Writ Petition No.1897 of 2006) to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act regarding their claim of refund of the excess amount alleged to have been retained by the Bank. The learned Judge also made it clear that as far as the properties included in the impugned orders were concerned, it would be open to third parties to approach the Designated Court under Act 1 of 2005 for appropriate relief.

8. Questioning the said common order, the Appellant Mill and its Directors filed Writ Appeal Nos.1142 to 1144 of 2006 and the Pondicherry Non-Banking Investors Protection Association preferred Writ Appeal Nos.1342 to 1345 of 2006. However, while upholding the validity of Act 1 of 2005, the learned Judge limited its operation to Unincorporated Institutions. Aggrieved by the said decision, the Government of Pondicherry preferred Writ Appeal No.293 of 2007.

9. Yet another facet of the issues involved in these Appeals is the Writ Petitions filed by the Banks and Financial Institutions to safeguard their interests in regard to attachment and sale of the properties of the Appellant Mill. The said Writ Petitions were considered by another learned Judge of the Madras High Court, who by his order dated 12th July, 2005, in PNL Investors' Welfare Association Versus Union of India, with reference to the SARFAESI Act, the Sick Industrial Companies (Special Provision) Act, 1958, Act 1 of 2005 and the provisions of the Industrial Disputes Act, 1947, and in particular, Section 25FF thereof, disposed of the Writ Petitions upon holding that the members of the workers' association/workers, either individually or through their respective Unions, were entitled to

the benefit available under Section 25FF of the 1947 Act from the Appellant Mill and Parry Ltd., in view of Section 13(6) of the SARFAESI Act. In the same order, the learned Judge directed the members of the Depositors' Association and others to avail of the remedies provided under the SARFAESI Act, as well as Act 1 of 2005, for necessary reliefs. The said decision of the learned Single Judge was questioned by Parry Ltd. and the Commissioner of Central Excise, Pondicherry, who filed W.A. Nos.1787 of 2005 and 1999 of 2005 respectively, claiming that the Department's claims were superior to those of others against the Appellant Mill and its properties.

10. A third set of Writ Petitions was filed by Pudukkottai Pradesa Sarkarai Aalai Thozhilalar Sangam; Indian Bank and the Ariyur Sugar Mills Staff Welfare Union being W.P. Nos.24834, 30532 and 36900 all of 2005, praying for appropriate directions. By a common order dated 7th December, 2005, another learned Judge of the Madras High Court appointed Justice K.P. Sivasubramaniam, a retired Judge of the Madras High Court, as Commissioner to go into the claims of the workmen. By the same order the learned Judge directed the Indian Bank to deposit Rs.6 crores in a no-lien account in the Indian Bank, Pondicherry Main Branch, on 8th December, 2005. Questioning the said order, the Appellant Mill filed Writ Appeal No.1209 of 2006. All the said matters were taken up for consideration together by the Division Bench. In its impugned judgment, the Division Bench agreed with the conclusion arrived at by the learned Single Judge with leave to the parties to approach the Tribunal to protect their interests. Writ Appeal No. 1142 of 2006 was, accordingly, dismissed, with liberty to the Appellant Mill to approach the Debts Recovery Tribunal for appropriate relief.

11. Apart from the submissions relating to Section 25FF of the Industrial Disputes Act, 1947, what we are really concerned with in these appeals is with regard to the validity of the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (Act 1 of 2005) and G.O.Ms.No.12 dated 18.2.2006 issued by the Department of Revenue and Disaster Management. As indicated hereinbefore, the object of the Act was to protect the interests of depositors in financial establishments in the Union Territory of Pondicherry. The Division Bench of the High Court observed that, inasmuch as, the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, were in pari materia with the provisions of the Pondicherry Act of 2005 and the provisions of the Tamil Nadu Act had been upheld, nothing further was required to be gone into in that regard. However, after the decision of a Full Bench of the Bombay High Court in the case of *Vijay C. Puljal vs. State of Maharashtra*¹ by which the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, was struck down, a batch of Writ Petitions came to be filed before the Madras High Court challenging the provisions of the Tamil Nadu Act. Since the provisions of the Maharashtra Act had been struck down by a Full Bench of the Bombay High Court, the Writ Petitions were also contested before a Full Bench, which considered the

contentions relating to the jurisdiction of the State Government, with reference to various Entries in the Seventh Schedule to the Constitution, provisions of the Companies Act, Reserve Bank of India Act and the Maharashtra Act and after examining the challenge thrown to the vires of the Act, came to the conclusion that the Tamil Nadu Act did not suffer from any legislative incompetency, nor was it arbitrary, unreasonable, or violative of the principles of natural justice. The Writ Petitions were, accordingly, dismissed. The Division Bench after considering the pronouncement of the Full Bench in regard to the Tamil Nadu Act and finding that the entire provisions of the Pondicherry Act 1 of 2005 were in pari materia with the provisions of the Tamil Nadu Act, held that the challenge to the legislative competency and jurisdiction of the Government of Pondicherry in enacting the impugned Act, was liable to be rejected.

12. A question of considerable importance also came up for consideration in the appeal filed by the Government of Pondicherry with regard to the observations of the learned Single Judge in Writ Petition No.1897 of 2006, wherein the learned Single Judge while upholding the validity of the enactment, went on to observe that the impugned enactment was made only in relation to unincorporated trade establishments and the State Legislature of Pondicherry had legislative competence to legislate in respect of unincorporated financial establishments only. In this regard, a submission was made on behalf of the Government of Pondicherry to the effect that Entry 32 of List II of the Seventh Schedule to the Constitution was only a residue of Entry 42 in the Central List and that Entry 32 also covered incorporated companies. It was submitted that the learned Single Judge had erroneously held that Pondicherry Act 1 of 2005 only governed unincorporated trade establishments.

13. In this regard, it was submitted before the Madras High Court by the learned Government Pleader that on a complaint received by the Pondicherry Police from one Boothanathan, alleging that the amount deposited by him in PNL Nidhi Ltd. had not been returned, the Pondicherry Police registered a case in Crime No.31 of 2004 on the file of the C.I.D., Pondicherry, which took up the investigation. Subsequently, about 3000 complaints were received from mostly aged people and retired Government servants who had invested their savings in the various financial establishments. On inquiry it was found that PNL Nidhi Ltd. had changed its name five times. It was initially a company known as "Pondicherry Mutual Fund Ltd." incorporated under the Companies Act, 1956. The name of the Company was later changed to Prasanan Narayanan Laxmi Nidhi Ltd. The name of the Company was again changed to PNL Nidhi Ltd. The Company floated various schemes, such as Fixed Akshaya Deposit and Locker facility and accepted deposits under the said scheme. It was also discovered that PNL Nidhi Ltd. was an unregistered and unrecognized financial establishment and that the promoters of PNL Nidhi Ltd. were Kannan and Baskaran, who were brothers and were also the Directors of the Appellant Mill. It also transpired that the

funds of the PNL Nidhi Ltd. were utilized for the purchase of properties in the name of the Appellant, New Horizon Mills, Pondicherry, and Arunachala Sugar Mills, Thiruvannamalai, and also for purchase of land at Kumbakonam, and land and buildings in Pondicherry and Chennai. The investigation conducted by the C.I.D., Pondicherry, revealed that the deposits collected from the depositors of PNL Nidhi Ltd. had been channelised to New Horizon Sugar Mills, wherein also Kannan and Baskaran were the Directors. It was on account of the bogus cheques which had been issued and dishonoured for want of funds, that the Chief Judicial Magistrate, Pondicherry, ordered attachment of the properties of the Appellant Mill and its Directors and in order to save the innocent investors from such companies and firms, the Government of Pondicherry introduced the Pondicherry Protection of Interests of Depositors (in Financial Establishments) Bill, 1997, which ultimately became an Act in 2004.

14. Appearing for the Appellant, Mr. A.K. Ganguli, learned Senior Advocate, submitted that the primary question for determination in these appeals is whether the subject matter covered by the Pondicherry Act is referable to Entries 43, 44, 45 and 97 of the Union List or to Entries 1, 30 and 32 of the State List. The other question for determination is whether the decision of this Court in *K.K. Baskaran Vs. State of Tamil Nadu*² rendered in the context of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, could be regarded as a precedent for determining the questions which have arisen in relation to the Pondicherry Act.

15. Mr. Ganguli urged that the Tamil Nadu Act dealt with the protection of deposits made by the public in the financial establishments. Section 2(3) of the said Act defines “financial establishments” not to include a Company registered under the Companies Act, 1956, or a Banking Company as defined under Section 5(c) of the Banking Regulations Act, 1949, (“the 1949 Act”), or a non-banking financial company as defined in clause (f) of Section 45(1) of the Reserve Bank of India Act, 1949.

16. Mr. Ganguli urged that in 2003, Section 2(3) of the Tamil Nadu Act was amended omitting the words “a company registered under the Companies Act, 1956” and inserting the words “a non-banking financial company” as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1949, after the words “does not include”. By the same amendment, the words “a company registered under the Companies Act, 1956” were introduced into Sub-Section (3) of Section 2. The amended provision now reads as follows:-

“(3) ‘financial establishment’ means an individual, an association of individuals, a firm or a company registered under the Companies Act, 1956 (Central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned

or controlled by any State Government or the Central Government or a banking company as defined in Section 5 (c) of the Banking Regulation Act, 1949 (Central Act 10 of 1949). 16. Mr. Ganguli urged that in contrast, the Pondicherry Act defined the expression “financial establishment” in Section 2(d) to mean :-

“Any person or group of individuals or a firm carrying on business of accepting deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by the Government, any State Government or the Central Government, or a banking company as defined under Section 5 of the Banking Regulation Act, 1949.”

17. Referring to the Statement of Objects and Reasons in the enactment of the Pondicherry Act, 2004, Mr. Ganguli pointed out that it had been specifically indicated that there had been a mushroom growth of non-banking financial establishments and deposit-taking unincorporated bodies not covered under the Reserve Bank of India Act, 1934, in different parts of the country. Accordingly, it was proposed to undertake a legislation which sought to protect the deposits made by the public in financial establishments not being companies registered under the Companies Act, 1956, or a Corporation or a Cooperative Society owned or controlled by the State Government or the Central Government or a Banking Company under the Banking Regulation Act. The Division Bench of the Madras High Court in the impugned judgment has referred to the Full Bench decision of the said Court from which the appeals in K.K. Baskaran’s case arose. In paragraph 13- g of the said judgment, it was recorded that it was also useful to refer to the stand taken by the Advocate General who defended the Tamil Nadu Act before the Full Bench by stating that the Act was intended to realize the deposits made by the public in the financial establishments, whether they were incorporated or not. The Division Bench went on to hold further that the entire reasoning of the Full Bench was applicable to the impugned Act of the Government of Pondicherry. Accordingly, the Division Bench held that the financial establishments referred to in Section 2(d) of the impugned Act covered both unincorporated and incorporated trading establishments.

18. Mr. Ganguli tried to impress upon us that in view of the aforesaid decisions in the language adopted in the definition of “financial establishments” in the two Acts, the Court would be required to examine the issue carefully to determine as to whether the decision in K.K. Baskaran’s case (supra) relating to the Tamil Nadu Act could ipso facto be made applicable to determine the scope and ambit of the Pondicherry Act.

19. Coming to the next question as to whether the State enactments as well as the Parliamentary enactments covered the same field, namely, “investor’s protection”, Mr.

Ganguli submitted that the decision of the Full Bench of the Madras High Court in the case of *S. Bagavathy Vs. State of Tamil Nadu*³ dealing with the Tamil Nadu Act and other Parliamentary legislations prohibiting and regulating acceptance of deposits by financial establishments, held the same to be a valid piece of legislation. The Full Bench, inter alia, observed that the existing laws, namely, Section 58A of the Companies Act, 1956, regulates the acceptance of the deposits and Section 45S of the Reserve Bank of India Act, 1934, prohibits the acceptance of deposits and also prescribes suitable punishments and penalties for contravening the same, but neither of the existing laws provide for regulating the activities of the financial establishments, which not only duped the innocent depositors and accepted deposits from them, but also siphoned off, diverted or transferred the funds for their own use in a mala fide manner. Mr. Ganguli submitted that the existing laws did not provide for the attachment of the properties that were procured either in the name of the financial establishments or in the name of any other person from and out of the deposits collected by the financial establishments. Mr. Ganguli also urged that the Full Bench further observed that in the absence of any effective remedy in the Central legislation to regulate control of either unincorporated or incorporated companies in the matter of depositors, who have deposited their hard-earned money with the financial establishments, the State Government was fully competent to bring out legislation to suit the needs of the public and to protect the interests of the depositors as well as in the public interest. Mr. Ganguli submitted that even though the Reserve Bank of India Act, 1934, prohibits acceptance of deposits and prescribes a penalty on any violation of the provisions of the Act, no provision or mechanism had been included for attaching the properties of the financial establishments and the properties of mala fide transferees. Referring to paragraph 91 of the Full Bench judgment, Mr. Ganguli submitted that it had been clearly indicated therein that the mere absence of exercise of such power conferred under Section 58B (5A) or 58G of the Reserve Bank of India Act, could not by itself validate the impugned legislation where the Government had proposed to protect the interests of depositors, in the public interest and in order to regulate the activities of such financial institutions, which power could be traced to the field of legislation under Entries 1 and 32 of List II of the Seventh Schedule to the Constitution. It was categorically observed by the Full Bench that where no licence had been obtained from the Reserve Bank of India to commence and continue operations, the question of applicability as well as violation of the directions issued under Section 45S of the Reserve Bank of India Act by the Reserve Bank of India remains unanswered. The Full Bench had also observed that concededly none of the Petitioners had obtained licence from the Reserve Bank of India nor can the business of financial establishments in accepting deposits be strictly construed to be “banking”, as defined under the Banking Regulations Act, 1949. Mr. Ganguli urged that since none of the Petitioners are companies registered under the Companies Act, 1956, the provisions of the said Act would not be applicable to them. It was also observed that the impugned legislation

was enacted in the public interest to regulate the activities of the financial establishments falling under Entries 1 and 32 of the State List. Mr. Ganguli urged that it is in such background that the Full Bench concluded that the Tamil Nadu Act could be traced to the field of legislation under Entries 1 and 32 of List II of the Seventh Schedule, without analyzing the full scope of the said Entries on the one hand and Entries 43, 44 and 45 of the Union List, on the other.

20. Referring to the decision of the Full Bench of the Bombay High Court in Vijay C. Puljal's case (supra), which had declared the Maharashtra Protection of Interests of Depositors (in Financial Establishment) Act, 1999, to be ultra vires for want of legislative competence of the State legislature, Mr. Ganguli contended that the Full Bench had relied upon the decision of this Court in Delhi Cloth and General Mills Vs. Union of India [(1983) 4 SCC 166] in which the validity of Section 58A of the Companies Act, 1956, which regulated deposits accepted by companies, was questioned on the ground that the subject matter of the enactment, in pith and substance, fell within the subject matter of Entry 30 of the State List. This Court had, however, upheld the validity of Section 58 of the Companies Act, upon holding that the subject matter of the legislation could be referred to Entries 43 and 44 of the Union List and the Parliament was, therefore, alone competent to enact the said law. Mr. Ganguli pointed out that the subsequent enactment of Section 58AA which made special provisions in relation to small depositors and declared non-compliance with the provisions thereof as a criminal offence punishable with imprisonment of three years and fine, was also referable to Entries 43 and 44 of the Union List, being an amendment to the Companies Act which was a central enactment.

21. Several other decisions on the same lines were referred to by Mr. Ganguli which need not, however, detain us as the Full Bench of the Bombay High Court had held that the Maharashtra Act fell within the exclusive jurisdiction of the Parliament being referable to Entries 43, 44, 45 and 97 of List I of the Seventh Schedule.

22. Reference was then made to the decision of this Court in K.K. Baskaran's case (supra). Mr. Ganguli urged that in the said case it was the validity of the Tamil Nadu Act alone which was considered by this Court and this Court took note of the fact that the "financial companies" had not obtained any licence from the Reserve Bank of India and hence they were not governed by the Reserve Bank of India Act, nor the Banking Regulation Act, 1949. In the context of the above, this Court observed that the Tamil Nadu Act is not focused on the transactions of banking or the acceptance of deposits, but is focused on remedying the situation of the depositors who were deceived by the fraudulent financial establishments. Applying the doctrine of pith and substance, this Court held that the said Act was referable to Entries 1, 30 and 31 of List II of the Seventh Schedule to the Constitution and not Entries 43,

44 and 45 of List I thereof. Mr. Ganguli urged that the decision of the Full Bench of the Bombay High Court was the subject matter of the pending appeal when the decision in K.K. Baskaran's case (supra) was rendered. The appeal from the decision of the Full Bench of the Bombay High Court came to be considered subsequently on 29th September, 2011, when the constitutional validity of the Maharashtra Act was upheld with the rider that if any party wished to submit that it was not covered by the Maharashtra Act or the Tamil Nadu Act, it would be open to them to take appropriate proceedings before the forum concerned.

23. Mr. Ganguli lastly urged that the decision in K.K. Baskaran's case (supra) was rendered ex-parte without any representation from either the State or the Union Government and while the judgment may be binding between the parties, it had no precedence value. Submitting that there were several other similar matters pending with regard to the acceptance of deposits by companies and regulation thereof with a view to providing protection to investors, Mr. Ganguli urged that the appeals were liable to be allowed.

24. Concluding his submissions, Mr. Ganguli reiterated that it was evident that the subject matter of the Pondicherry Act is preferable to various Parliamentary laws in existence which deal with investors' protection and provide measures for recovery, which were covered under Entries 43, 44, 45 and 97 of the Union List : Mr. Ganguli submitted that the attempt to make the said Entries referable to Entries 1, 30 and 32 of the State List, was erroneous and the appeals were liable to be allowed upon the setting aside of the judgment and order passed by the Division Bench of the Madras High Court.

25. At the very initial stage of his submissions, Mr. R. Venkataramani, learned Senior Advocate appearing for the Government of Pondicherry, submitted that the present litigation was, in fact, a proxy litigation since the companies which had received the deposits from the various depositors had not come to the High Court, but were being represented by a sister concern, namely, M/s New Horizon Sugar Mills Ltd. It was submitted that the State Government had acted in accordance with the Entries in List II as there was no occupied field to oust the competence of the State Government to legislate in regard to Entries 1 and 30 of List II. According to Mr. Venkataramani, the question of repugnancy of the Central legislation having an overriding effect on the State legislation, did not arise in the facts of the case. In the light of his aforesaid submissions, Mr. Venkataramani contended that the issues which arose for consideration in these appeals were : (i) Whether the judgment of this Court in Baskaran's case has any relevance for disposal of the appeal? (ii) Even if the said judgment was not to be relied upon, whether the Pondicherry Act of 2005 is constitutionally valid being protected by the provisions of Section 18 and 21 of the Government of Union Territories Act, 1963? and (iii) Whether the Appellant not being an "establishment" which has received the deposits in question and not being one of the class of establishments within

the meaning of Section 2(d) of the Act, could be permitted to challenge the validity of the Act as a proxy for the defaulting establishment?

26. Mr. Venkataramani urged that the second question indicated hereinabove involved the interpretation of Articles 246 and 254 of the Constitution and the Government of Union Territories Act, 1963. It was urged further that having regard to the distinction between the position of States and Union Territories in the Scheme of the Constitution and under the provisions of the Government of Union Territories Act, 1963, this Court would have to consider the said issue as a pure question of law relevant for determination of the vires of the law. Mr. Venkataramani submitted that regardless of the submissions made by the Appellant with regard to the judgment in K.K. Baskaran's case (supra), the Pondicherry Act of 2005 deserves to be upheld for special reasons and on other grounds emerging from the provisions of the aforesaid Act. Mr. Venkataramani also contended that the challenge thrown to G.O.Ms.No.12 dated 18.2.2006 being beyond the scope of the Act, was not acceptable, since the Appellant neither received any deposits directly from the depositors nor did it directly engage in the business of granting financial loans, and would not, therefore, fall under Section 2(d) of the Act which deals with financial establishments. It was further urged that since the Appellant was a stranger to the legislation, its locus could be confined only to infringing actions taken under the Act.

27. Mr. Venkataramani submitted that the Appellant Company had been set up primarily to lend support to the challenge to the G.O.Ms.No.12 dated 18.2.2006. Mr. Venkataramani submitted that M/s PNL Nidhi Ltd., the offending establishment, had not filed any petition relating either to the Act or the Government order. As a consequence, the actual establishment which would fall under Section 2(d) of the Act was not before the Court. It was contended that M/s PNL Nidhi Ltd. has been shown as the Respondent in both the two writ petitions, while Writ Appeal Nos.1142 and 1143 of 2006 were filed by M/s Kannan and others, with M/s PNL Nidhi Ltd. as the second respondent. In the absence of appeals by the parties directly covered by the Act, the Appellant could not, as an alter ego of such parties, claim any locus to challenge the validity of the Pondicherry Act of 2005. Interestingly, it was also pointed out that the licence granted to Pondicherry Nidhi Ltd. by the Reserve Bank of India in terms of Section 45 IA of the Reserve Bank of India Act, 1934, stood cancelled on 14th September, 2005. Mr. Venkataramani submitted that it was also required to be taken into consideration that the licence granted to Pondicherry Nidhi Ltd. by the Reserve Bank of India in terms of Section 45 IA of the Reserve Bank of India Act, 1934, stood cancelled on 14.9.2005 and technically there is, therefore, no company licenced or registered to carry on the non- banking financial activities, which were pending before this Court.

28. On the Scheme of the legislative powers of Union Territories and the Parliament, Mr. Venkataramani submitted that the absence of Parliamentary legislation on a Union List subject does not clothe the State Legislature with the competence to enact a legislation and that deficiency in Parliamentary legislation, referable to the Union List, could not also confer competence on the State Legislature to fill in the gaps, having regard to the Scheme of the Union Territories Act, 1963. It was submitted that the judgments cited on behalf of the Appellant in support of his two- fold submissions referred to above, all relate to conflicts between Parliamentary and State Legislations referable to Lists I and II of the Seventh Schedule and the Scheme of Article 246 of the Constitution. In such cases, overlapping of Parliamentary and State Legislations, referable to Entries in the Concurrent List, stand on a different footing and the threshold embargo on the State Legislature to enact laws relatable to Union List, does not exist. In such cases, the only issue which could at all arise would be with regard to repugnancy and that too provided the legislations contained conflicting provisions. Referring to the decision of this Court in *Ramji and others vs. State of U.P. others*⁴Mr. Venkataramani submitted that the doctrine of pith and substance could not be applied to the facts of this case on account of the fact that when both the Central, as well as the State Legislatures, were operating in the concurrent field, there was no question of trespass upon the exclusive jurisdiction vested in the Centre under Entry 52 of List I. The only question which, therefore, survived was whether putting both the pieces of legislations enacted by the Centre and the State together, any repugnancy could be traced, in which event a different set of consequences will follow. In the instant case there being no question of any inconsistency, any further question relating to the overriding effect of the Central provision, would not arise. The question which necessarily arises is whether the Parliament and the State Legislature exercised their powers over the self-same subject matter, or whether the laws enacted by Parliament were intended to be a complete and exhaustive code in themselves.

29. Mr. Venkataramani submitted that the law in question is not in substance a matter relating to incorporation, regulation or winding-up of either incorporated or unincorporated entities and Entries 43 and 44 of List I would have to be seen in the context of laws relating to corporations and different modes of incorporation. It was submitted that Entry 33 in the Federal List of the Government of India Act, 1935, combined Entries 43 and 44 under List I of the Seventh Schedule to the Constitution, as they are concerned with incorporation and regulations and providing for measures regulating the business of corporations. Reliance was placed on the decision of this Court in *R.C. Cooper vs. Union of India*⁵wherein the fine distinction between regulation of the business activities of and regulation of a corporation was noticed. In fact, Sections 58 A and 58AA of the Companies Act, 1956, and Section 45S of the Reserve Bank of India Act, 1934, could well fall within the scope of Entries 43 and 44

of List I. Mr. Venkataramani argued that an offence whether committed by individuals or other legal entities would fall within the scope of Entry I List III viz. “criminal law”. It is for that purpose that Entry I List III provides for an exclusion from “offences against laws with respect to any of the matters specified in List I and List II”.

30. It was further pointed out that Entries 93 in List I and 64 in List II are similarly worded and do not refer to offences against laws with respect to any of the matters in the List. In that context, it was submitted that the Pondicherry Act is not a new law within the scope of Entry 93 of List I. It was further submitted that the Pondicherry Act of 2005 not being a law falling within the scope of Entries 43 and 44 of the Union List and falling within the Entries in List III, the question of threshold lack of competence or invasion of a forbidden territory does not arise. Whether or not the Parliament could effect any further expansion of the provisions of Sections 58A or 58AA, could not, therefore, occupy the field relating to offences or crimes which are questions that can only be raised in the context of List I and List II controversies, and are irrelevant for the purposes of the present case.

31. According to Mr. Venkataramani, one of the other reasons for enacting the Pondicherry Act of 2005 was to protect the interests of depositors and the Pondicherry Act of 2005 has primarily made the retention of deposits as a wrongful and fraudulent act and thus constituting a crime and an actionable wrong. It was further submitted that the Act provides for a special procedure and machinery for retrieval of the deposits or such property as may answer and satisfy the claims of the depositors. The law, therefore, essentially provides for tracing the source of the monies and the deposits in the hands of third parties and make it available to satisfy the claims of the depositors. According to Mr. Venkataramani, the aforesaid legislation would fall under Entry I (criminal law); Entry 8 (actionable wrong), Entry 13 (civil procedure) and Entry 21 (commercial and industrial monopolies) of List II of the Seventh Schedule to the Constitution. According to Mr. Venkataramani, none of the measures under the Act could be said to relate to regulation of the business activities of any corporation and even if such submission is taken to be correct, the Pondicherry Act of 2005 could not be traced to Entries 43 or 93 of List I. Reference was also made to the decision of this Court in *Greater Bombay Co-op Bank vs. United Yarn*⁶

32. Going a step further, Mr. Venkataramani urged that even if the reference to Entries 1 and 30 of List II could be open to question, Entry 32 of List II, insofar as it permitted any law relating to incorporated or unincorporated establishments, would be available not as a law regulating the business activities of the establishments, but as a law dealing with actionable wrongs committed by establishments. Consequently, no interference was called for with the decision of the Madras High Court as the law in question had been enacted to deal with securing the public order, which is a concept of wide amplitude. It was contended that apart

from the decision of this Court in *Romesh Thapar Vs. State of Madras*⁷ and *Ram Manohar Lohia*⁸ this Court had also considered the question in *Rev. Stainislaus Vs. State of M.P.*⁹ and *Arun Ghosh Vs. State of West Bengal*¹⁰ and has in no uncertain terms held that certain deviations could be resorted to in order to deal with securing public order. Furthermore, security of transactions and their integrity are equally and deeply relevant to public order. The reference to and reliance placed upon Entry 97 of List I was, therefore, misconceived.

33. It was then submitted that the submissions made on behalf of the Appellant that Section 2(d) of the Pondicherry Act does not include incorporated entities, as distinct from the corresponding provisions of the Tamil Nadu Act, is misconceived. While the definition of “financial establishment” in the Tamil Nadu Act was apparently different, the ultimate result was the same. Furthermore, the Pondicherry Act uses the expression “person” in wide terms to include natural persons (as individuals) and companies. Mr. Venkataramani submitted that the expression “person” has been exhaustively dealt with in P. Ramanatha Ayyar’s “Advanced Law Lexicon” and did not require any further elucidation. Referring to Section 11 of the Indian Penal Code, Mr. Venkataramani submitted that the same defines a person to include a company or association or body of persons whether incorporated or not. Accordingly, the use of the expression “person” in the Pondicherry Act also included both unincorporated as well as incorporated companies.

34. Mr. Venkataramani urged that there was no repugnancy at all between the provisions of the Pondicherry Act or the Companies Act, 1956 and/or the Reserve Bank of India Act and in the absence of any occupied legislation enacted under the provisions of the Companies Act and the Reserve Bank of India Act, the question as to whether the Pondicherry Act was subservient to the Central legislation was no longer relevant, particularly when the said Act had received the assent of the President and was, therefore, protected under Article 254(2) of the Constitution. Consequently, the law being traceable to Entry 32 of List II and Entries 1, 8, 13 and 21 of List I and the same having received the assent of the President, stands fully protected by the provisions of Section 31 of the 1963 Act. In support of his submissions Mr. Venkataramani referred to the decisions of this Court in *S. Pushpa and others Vs. Sivachanmugavelu and others*¹¹ *New Delhi Municipal Council Vs. State of Punjab Others*¹² and *T.M. Kannian Vs. I.T.O. Pondicherry*¹³ In the first of the said three decisions, this Court had the occasion to consider the question of reservation in regard to recruitment of Scheduled Caste candidates in the Union Territory of Pondicherry. It was held that those Scheduled Caste candidates who had migrated from other States would be eligible for selection and appointment to posts reserved for the Scheduled Caste candidates in the Union Territory of Pondicherry, since it had consistently followed the policy of the Central Government where all candidates irrespective of the State/Union Territory were given the benefit of reservation and the selections made pursuant to such policy were valid. The second decision in the case

of New Delhi Municipal Council was with regard to the powers of the Central Government to make laws with respect to Union Territories under Article 246(4) of the Constitution of India. While deciding the said issue, it was held by this Court that where the enactment could be related to and upheld with reference to some constitutional value, its validity should be upheld. The third decision is also on the same lines.

35. Mr. Venkataramani ended on the note that since the Parliamentary Act had received the assent of the President, it would have effect irrespective of the Central legislation and as decided in *Charan Lal Sahu Vs. Union of India*¹⁴ conceptually and jurisprudentially there is no bar on the State to assume responsibilities analogous to *parens patriae* to discharge the State's obligations under the Constitution. Learned counsel also referred to the Bhopal Gas Leak Disaster Act, which has been traced to Entry 13 of the Concurrent List. Mr. Venkataramani urged that the Appeals were entirely misconceived and were liable to be dismissed.

36. From the case made out on behalf of the Appellant Mill and the submissions in support thereof, what emerges for decision is whether the subject matter covered by the Pondicherry Act is relatable to Entries 43, 44, 45 and 97 of the Union List or to Entries 1, 30 and 32 of the State List. Coupled with the aforesaid question is the other question as to whether the decision of this Court in K.K. Baskaran's case (*supra*), upholding the validity of the Tamil Nadu Act, would also be applicable for determining the validity of the Pondicherry Act, having particular regard to Mr. Ganguli's submissions that there were major differences in the two enactments.

37. As far as the first question is concerned, on a scrutiny of the Seventh Schedule to the Constitution, it will be seen that Entries 43, 44 and 45 of List I of the Seventh Schedule to the Constitution deal with the following matters, namely. Incorporation, regulation and winding up of trading Corporations, including banking, insurance and financial corporations, but not including Co-operative Societies. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

38. In other words, each of the above-mentioned Entries deal with matters relating to trading corporations, which include banking, insurance and financial corporations, whereas Entries 1, 30 and 32 of List II deal with the following :-

“1. Public order (but not including [the use of any naval, military or air force or any other armed force or the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power). Money-lending and money-lenders; relief of agricultural indebtedness. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities;

unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.”

39. The Entries relating to the State List referred to above, and in particular Entry 30, appear to be a more appropriate source of legislative authority of the State Assembly for enacting laws in furtherance of such Entry. The power to enact the Pondicherry Act, the Tamil Nadu Act and the Maharashtra Act is relatable to Entries 1, 30 and 32 of the State List, which involves the business of unincorporated trading and money-lending which falls within the ambit of Entries 1, 30 and 32 of the State List.

40. In addition to the above, it has also to be noticed that the objects for which the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act were enacted, are identical, namely, to protect the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life savings to unscrupulous and fraudulent persons and who ultimately betrayed their trust.

41. However, coming back to the constitutional conundrum that has been presented on account of the two views expressed by the Madras High Court and the Bombay High Court, it has to be considered as to which of the two views would be more consistent with the constitutional provisions. The task has been simplified to some extent by the fact that subsequently the decision of the Bombay High Court declaring the Maharashtra Act to be ultra vires, has been set aside by this Court, so that there is now a parity between the judgments relating to the Maharashtra Act and the Tamil Nadu Act.

42. The three enactments referred to hereinabove, were framed by the respective legislatures to safeguard the interests of the common citizens against exploitation by unscrupulous financial establishments mushrooming all over the country. That is, in fact, the main object indicated in the Statement of Objects and Reasons of the three different enactments.

43. Even if it is to be accepted that the Pondicherry Act is relatable to Entries 43, 44 and 45 of List I, it can be equally said that the said enactment is also relatable to Entries 1, 30 and 32 of List II, thereby leaving the field of legislation open, both to the Central Legislature as well as the State Legislature. In such a situation, unless there is anything repugnant in the State Act in relation to the Central Act, the provisions of the State Act will have primacy in determining the law in the present case. Apart from the above, the provisions of the Pondicherry Act are also saved by virtue of Article 254(2) of the Constitution. For a proper understanding of the legal position, the provisions of Article 254 are extracted hereinbelow:-

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States -

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void;

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

44. As will be evident from the above, clause (1) of Article 254 provides that when there are two laws enacted by the Parliament and the State Legislature in which certain inconsistencies occur, then subject to the provisions of clause (2), the law made by the Parliament would prevail and the law made by the State Legislature to the extent it is repugnant to the Central law, shall be void. Clause (2), however, also provides that in a given situation where a law of a State is in conflict with the law made by Parliament, the law so made by the State Legislature shall, if it has received the assent of the President, prevail in that State. In the instant case, the Pondicherry Act had received the assent of the President attracting the provisions of Article 254(2) of the Constitution.

45. At this stage, it may also be worthwhile to consider Mr. Venkataramani's submissions that the power to enact the Pondicherry Act could be traced to Entries 1, 8, 13 and 21 of the Concurrent List. Entry 1 of List III deals with criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power. Entry 8 deals with actionable wrongs. Entry 13 deals with civil procedure while Entry 21 deals with Commercial and Industrial monopolies, combines and trusts. Such submission has been advanced by Mr. Venkataramani in view of the provisions of Section 58A, 58AA and 58AAA of the Companies Act, 1956, which all deal with deposits invited and accepted by Companies. The said submission is, however, subject to the condition that the provisions

of the Companies Act are also attracted to the provisions of the Pondicherry Act. Although, it has been argued by Mr. Ganguli that the provisions of the Companies Act would not be attracted, we cannot overlook the amendment to the definition of “financial establishment” included in the Tamil Nadu Act and as defined in the Pondicherry Act. The definition of the expression “financial establishment” in Section 2(d) of the Pondicherry Act, which has been extracted in paragraph 14 hereinbefore, includes any person or group of individuals or a firm carrying on business of accepting deposits under any scheme or arrangement or in any other manner, but does not include a Corporation or a cooperative society owned or controlled by either the Central Government or the State Government or a banking company as defined under Section 5 of the Banking Regulation Act, 1949. In our view, the expression “any person” is wide enough to cover both a natural person as also a juristic person, which would also include a Company incorporated under the Companies Act, 1956. In that view of the matter, the definition in Section 2(d) of the Pondicherry Act would also include a Company such as the Appellant Mill, which accepts deposits from investors, not as shareholders of such Company, but merely as investors for the purpose of making profit. In this regard, reference may also be made to Section 11 of the Indian Penal Code which defines a “person” to include a Company or Association or body of persons, whether incorporated or not. Accordingly, we are inclined to accept Mr. Venkataramani’s submissions that the expression “person” in the Pondicherry Act includes both incorporated as well as unincorporated companies.

46. The decision in K.K. Baskaran’s case (supra) so far as it relates to protection of interests of depositors, cannot be ignored. In our view the decision rendered by the Madras High Court in K.K. Baskaran’s case (supra) would be equally applicable to the facts of this case. We have to bear in mind that the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld by the Madras High Court and this Court. The objects of the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act being the same and/or similar in nature, and since the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld, the decision of the Madras High Court in upholding the validity of the Pondicherry Act must also be affirmed. We have to keep in mind the beneficial nature of the three legislations which is to protect the interests of small depositors, who invest their life’s earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated. More often than not, the investors end up losing their entire deposits. We cannot help but observe that in the instant case although an attempt has been made on behalf of the Appellant to state that it was not the Appellant Company which had accepted the deposits, but M/s PNL Nidhi Ltd., which had changed its name five times, such an argument is one of desperation and cannot prima facie be accepted. This appears to be one of such cases where funds have been collected from the gullible public to invest in projects

other than those indicated by the front company. It is in fact the specific case of the Respondents that the funds collected by way of deposits were diverted to create the assets of the Appellant Mill.

47. In such circumstances, we are not inclined to accept the submissions made by Mr. Ganguli, since in our view there is little difference between the provisions of the Tamil Nadu Act and the Pondicherry Act, which is to protect the interests of depositors who stand to lose their investments on account of the diversion of the funds collected by M/s PNL Nidhi Ltd. for the benefit of the Appellant Mill, which is privately owned by Shri V. Kannan and Shri V. Baskaran, who are also Directors of M/s PNL Nidhi Ltd.

48. The Appeals are, accordingly, dismissed with costs assessed at Rs.1,00,000/-.

Judgment Referred

1(2005) 4 CtC 0705

2(2011) 3 SCC 0793

3(2007) 1 LW 0892

4(1956 SCR 0393

5(1970) 3 SCR 0530

6(2007) 6 SCC 0236

7(1950) SCR 0594

8(1966) 1 SCR 0709

9(1977) 2 SCR 0611

10(1970) 3 SCR 0288

11(2005) 3 SCC 0001

12(1997) 7 SC 0339

13(1968) 2 SCR 0103

14(1990) 1 SCC 0613