2013 (4) GLR 3162

GUJARAT HIGH COURT

Hon'ble Judges:Bhaskar Bhattacharya and J.B.Pardiwala JJ.

Consumer Protection & Analytic Committee Versus State Of Gujarat Ministry Of Agriculture And Cooperation

WRIT PETITION No. 77 of 2012 ; *J.Date :- SEPTEMBER 26, 2012

- CONSTITUTION OF INDIA Article - 226
- GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961 Section - 115A(1)
- MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002

Constitution of India - Art. 226 - Gujarat Co-operative Societies Act, 1961 - S. 115A(1) - Multi State Co-operative Societies Act, 2002 - public interest litigation - proposal for merger of a local Co-operative Society/Bank with Multi State Co-operative Bank challenged - contended that neither Act of 1961 nor Act of 2002 permits such merger and hence RBI cannot give permission for such merger - held, petitioner has raised a question which could be said at the most to be a question of law, but in no manner affecting public interest at large - as no public interest is involved and the fact that the merger is in interest of the depositors of the Bank to be merger, no interference called for - petition dismissed.

Imp.Para: [12] [13] [14] [16] [17] [27]

Cases Referred To :

1. Ashokkumar Pandey V/s. State Of West Bengal, 2004 3 SCC 349
2. Bandhua Mukti Morcha V/s. Union Of India, AIR 1984 SC 802
3. P.Seshadri V/s. S.Mangati Gopal Reddy, 2011 5 SCC 484
4. State Of Orissa V/s. Md.Illiyas, 2006 1 SCC 275
5. Union Of India V/s. Dhanwanti Devi, 1996 6 SCC 44

Cases Relied on :

1. D.C. Wadhwa & Ors. V/s. State Of Bihar And Ors, AIR 1987 SC 579
2. Iqbal Singh Narang & Ors. V/s. Veerang Narang, 2012 2 SCC 60
3. Janata Dal V/s. H.S.Chowdhary And Others, AIR 1993 SC 892

Equivalent Citation(s):

2013 (4) GLR 3162 : 2012 JX(Guj) 1435
JUDGMENT :-
J.B.PARDIWALA, J.

1 By way of this petition under Article 226 of the Constitution of India in the nature of a public interest litigation, the petitioner, an organization registered under the Gujarat Cooperative Societies Act and the Bombay Public Trusts Act, and functioning for the welfare of the consumers, has prayed for an appropriate writ, order or direction to declare that the merger of a Co-operative Bank under the Gujarat Co-operative Societies Act, 1961 with that of a Multi State Co-operative Bank registered under the Multi State Co-operative law could be termed as illegal and void ab-initio. The petitioner has also prayed for granting a status-quo as on date so far as the proposal of merger of the respondent No.5 Bank with the respondent No.6 Bank is concerned.

2 The case made out by the petitioner in this petition may be summarized as under:-

> 2.1 The petitioner is an organization functioning for the welfare of the consumers and is registered under the Gujarat Co-operative Societies Act and the Bombay Public Trusts Act. The petitioner was established in the year 2001 and since then, it claims to have been championing the rights of the consumers.
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> 2.2 It is the case of the petitioner that a recent newspaper report highlighted about the proposed merger of the respondent No.5 Bank, which is registered under the Gujarat Co-operative Societies Act, 1961 with that of the respondent No.6 Bank, which is registered under the Multi State Cooperative Societies Act, 2002. According to the petitioner, the decision of the respondent No.5 Bank to merge with the respondent No.6 Bank could be termed as de hors the statutory provisions of the law.
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> 2.3 According to the petitioner, even the Reserve Bank of India in its guidelines issued for merger/amalgamation of the Urban Co-operative Banks, dated February 2, 2005, has conceded to the position that the Banking Regulation Act, 1949 does not empower Reserve Bank of India to formulate a Scheme with regard to merger and amalgamation of Cooperative Banks. The State Governments have incorporated in their respective Co-operative Societies Act, a provision for obtaining prior sanction in writing, of Reserve Bank of India, or an order, inter-alia, for sanctioning a scheme of amalgamation or reconstruction. According to the petitioner, the RBI has further clarified that the State Act specifically provides for merger of Co-operative Societies registered under them,

however, the position with regard to taking over of a Cooperative Bank registered under the State Act by a Cooperative Bank registered under the Central Act, is not clear. According to the Reserve Bank of India, although there are no specific provisions in the State Act or the Central Act for the merger of a Co-operative Society under the State Acts, with that under the Central Acts, if it is felt that the administrators of the concerned Acts are agreeable to such merger/amalgamation, in such circumstances, the Reserve Bank of India may consider the proposals on merits leaving the question of compliance with relevant statutes to the administrators of the Acts.

2.4 According to the petitioner, the RBI has also clarified in its guidelines that the Reserve Bank would confine its examination only to financial aspects and to the interests of depositors as well as the stability of the financial system while considering such proposals. According to the petitioner, in all probability, the respondent No.5 Bank, which is a State Co-operative Bank would get merged with the respondent No.6 bank, which is a Multi State Co-operative Bank and such a merger should not be permitted, being contrary to the statutory provisions and against public interest. The petitioner has, therefore, prayed for the reliefs as referred to above.

3 Stance of the respondent No.2 - Deputy Registrar (Banking) Co-operative Societies, Gujarat State.

3.1 According to the respondent No.2, the petitioner is not a pro-bono publico and the petition in substance is not a public interest litigation. A co-operative Society is not a "State" within the meaning of Article 12 of the Constitution of India and thus, not amenable to writ jurisdiction under Article 226 of the Constitution of India. According to the respondent No.2, the respondent No.5 Bank has five branches, and the total strength of the employees of the respondent No.5 bank is 57. There are 52,552 depositors and the depositors upto Rs. 1,00,000 are 51,361 in number. The total deposit amount of such depositors is to the tune of Rs. 61.37 crore. The depositors having an amount of more than Rs. 1,00,000 are 1,191 in numbers and the sum aggregate of the deposit amount is to the tune of Rs. 28.24 crore. According to the respondent No.2, if the respondent No.5 bank is not permitted to merge with another financially sound Co-operative Bank, then a situation may arise which may lead the respondent No.5 bank to go into liquidation. The DICG would be required to pay an amount of Rs. 61.37 crore to the 51,361 depositors who have deposits upto Rs. 1,00,000. In such circumstances, the depositors with their individual deposits of more than Rs. 1,00,000, who are 1,191 in number, having deposits of Rs. 28.24 crore, would not be in a position to realize their deposits.

4 Stance of the respondent No.4 - Reserve Bank of India:

4.1 According to the Reserve Bank of India, the petition is not maintainable as there is no violation of any fundamental, legal or statutory rights by the Reserve Bank of India, of the petitioner. The petitioner has no locus-standi to file the petition of the present nature against the RBI and, therefore, the petition deserves to be dismissed. According to the Reserve Bank of India, the petitioner has challenged the proposed merger of the Udhna Citizen Co-operative Bank, the respondent No.5, a Society registered under the provisions of the Gujarat Co-operative Societies Act, 1961 with the Kalupur Commercial Co-operative Bank, the respondent No.6, a Society registered under the provisions of Multi State Co-operative Societies Act, 2002, and as the challenge is to the proposed merger between the two Banks, the RBI has yet to examine the proposal received from the respective Banks as per the guidelines of the RBI. Thus, according to the RBI, the petition is premature and wholly misconceived. According to the RBI, it acts as a banker to the Government of India and all State Governments, and also manages their public duties. The RBI regulates and supervises Commercial Banks and Co-operative Banks in the country. According to the RBI, Section 115-A(i) of the Act, 1961 provides that an order for the scheme of compromise or arrangement or of amalgamation or reconstruction of the Bank may be made only with the previous sanction in writing of the RBI. If the transferor bank and transferee bank including their administrators are agreeable for such amalgamation, then the RBI would consider the proposal on merit leaving the question of compliance with relevant statutes to the administrators of the respective act.

4.2 According to the RBI, the petition in the nature of a public interest litigation would not be maintainable, as the issue relates to the proposed merger and it is for the banks concerned and it's shareholders to decide as regards the proposed merger. According to the RBI, the petitioner being a non-governmental organization, has no locus-standi to question the legality, soundness and correctness of the scheme of amalgamation, which is still at the stage of proposal in the name of public interest, more particularly when there is no public interest involved in the matter.

5 Stance of the respondent No.5 - Udhna Citizens Cooperative Bank Ltd.

5.1 According to the respondent No.5, the present petition in the nature of a public interest litigation is not maintainable at the instance of the petitioner who is a non-governmental organization and no way concerned with the respondent No.5 Bank or with the members or shareholders of the respondent No.5 bank. According to the respondent No.5, the merger of the respondent No.5 bank with the respondent No.6 bank has yet to take place. The merger is at the stage of proposal and no final decision

has been taken in the matter. According to the respondent No.5, the Directors of the respondent No.5 bank have indulged into serious illegalities while sanctioning loans to the tune of crore of rupees, more particularly in favour of their friends and relatives, by sheer misuse of their post and position in the bank. According to the respondent No.5 bank, the Reserve Bank of India had, therefore, issued notice under Section 35(A) of the Banking Regulations Act, and thereby had taken over the charge of the bank from all the Directors and appointed an administrator to run the bank. According to the respondent No.5, a criminal prosecution has also been instituted against the Directors of the bank for the offences punishable under Sections 406, 409, 420, 120B read with Sections 114 and 34 of the Indian Penal Code. At a later stage, offences punishable under Sections 465, 466 and 467 of the IPC were also added. The investigation revealed that the Directors, Vice-Chairman and Manager of the respondent No.5 bank, in collusion with the staff of the Bank had opened 195 fake and bogus accounts and thereby committed criminal misappropriation to the tune of crore of rupees.

5.2 According to the respondent No.5, the present petition has been filed at the behest of the Directors, Vice-Chairman, Manager etc. of the respondent No.5 bank only with a view to wriggle out from the liability of repayment of the outstanding loan amount to the respondent No.5 bank. According to the respondent No.5 bank, the proposed merger is in the interest of not only the depositors of the respondent No.5 bank, but in a larger public interest so that the depositors, for no fault on their part, may not have to lose their hard earned money. It is alleged that the present petition filed by the petitioner claiming to be the champion of a public cause or interest, is in fact, against the interest of public and the society at large.

6 Stance of the respondent No.6 - Kalupur Commercial Co-operative Bank Limited.

6.1 According to the respondent No.6 Bank, the petition ostensibly filed by way of a public interest litigation, is in fact has been filed with an ulterior motive of shielding the defaulters of the respondent No.5 bank as well as the Directors of the said bank, who had indulged into irregularities and malpractice as a result thereof the financial position of the respondent No.5 bank became very weak and thereby putting the interest of 52,000 depositors at stake. According to the respondent No.6 bank, by order dated 24th November, 2010, the Registrar, Co-operative Societies, Gujarat State, suspended the Board of Directors of the respondent No.5 bank and appointed an administrator. Thereafter, on verification of the records of the bank, it came to the knowledge of the State Government that the financial position of the respondent No.5 bank has become very weak and it was felt that to protect the interest of

around 52,000 depositors, the respondent No.5 bank be merged with a financially sound bank.

6.2 According to the respondent No.6 bank, the inspecting officer of the RBI also submitted a report dated 8th August, 2011, wherein, the inspecting officer of the RBI opined that the respondent No.5 bank may be merged with a financially strong bank so as to protect the interest of the depositors. Based on such opinion of the RBI as well as the Government of Gujarat, the respondent No.5 bank through it's Administrator, approached the respondent No.6 bank with a request to take over the respondent No.5 bank.

6.3 According to the respondent No.6 bank, the aforesaid proposal was studied and thereafter the respondent No.6 bank deputed their officers and also appointed a Chartered Accountant for carrying out due diligence of the respondent No.5 bank. After considering the due diligence report, the respondent No.6 bank, vide it's Resolution passed by the Board of Directors on 31st January, 2012, resolved to accept the offer of the respondent No.5 bank to get merged with the respondent No.6 bank, subject to the approval by the shareholders and the RBI, and after following the due procedure for amalgamation/merger as required under the Act of 2002.

6.4 According to the respondent No.6 bank, as required under Section 17 of the Act of 2002, the respondent No.6 bank issued notice by post to all it's share-holders and also published a public notice in the newspapers on February 24, 2002 for holding of an extra-ordinary general meeting for the purpose of discussing, deciding and resolving whether the assets and liabilities of the respondent No.5 bank be taken over by the respondent No.6 bank or not.

6.5 According to the respondent No.6 bank, the said extra ordinary general meeting of the shareholders was convened on 5th March, 2012, and in the said meeting, a Resolution was passed for taking over the assets and liabilities of the respondent No.5 bank. It is the case of the respondent No.6 bank that vide it's letter dated 9th March, 2012, it has forwarded the proposal to the Central Registrar of Co-operative Societies, Government of India. It is the case of the respondent No.6 bank that as on date, there is no final order of merger, and therefore, the petition is not only devoid of any merit, but is also premature and lacking in bonafide.

7 Stance of the respondent No.7 - Bank Bachav Committee of Udhna Citizen Co-operative Bank Limited.

7.1 According to the respondent No.7, the petition is filed with an oblique motive and for an extraneous consideration, and there is no public interest involved. According to the respondent No.7, the petitioner has failed to establish as to how it is concerned with the proposed merger of the respondent No.5 bank with the respondent No.6 bank. According to the respondent No.7, the petitioner is a nongovernmental organization, situated at Ahmedabad and is no way concerned with the respondent No.5 bank, which is situated at Surat. None of the members of the petitioner organization are either shareholders or depositors in the respondent No.5 bank.

7.2 According to the respondent No.7, there are 52,520 depositors who have invested around Rs. 87.91 crore in the respondent No.5 bank. According to the respondent No.7, if any indulgence is shown to the petitioner, then the same may lead the respondent No.5 bank to go into liquidation. According to the respondent No.7, if the respondent No.5 bank would go in liquidation, in such circumstances, the depositors will be entitled to receive only an amount of Rs. 1,00,000 (Rupees one lac only) under the Deposit Insurance and Credit Guarantee Corporation Act. According to the respondent No.7, the banking sector as a whole would be adversely affected and larger public interest would suffer.

8 Stance of the respondent No.8 - Gujarat Urban Cooperative Banks Federation.

8.1 According to the respondent No.8, which is a Federation of Gujarat Urban Co-operative Banks, the present petition challenging the proposed merger of the respondent No.5 - Udhna Citizen Co-operative Bank, with the respondent No.6 - Kalupur Commercial Co-operative Bank, is frivolous, vexatious, and smacks of lack of bonafide. According to the respondent No.8, the petitioner has not made out any ground to show that the proposed merger is not in public interest.

9 Legal submissions on behalf of the petitioner:

9.1 Mr. Vishwas K. Shah, learned counsel appearing for the petitioner vehemently submitted that there is no provision under the Act of 1961 which permits a State Co-operative Society to merge with a Multi State Co-operative Society and in the same manner, there is no provision under the Act of 2002, which permits or empowers a Multi State Co-operative Society to take over a Co-operative Society registered under any State law. According to Mr. Shah, if such is the legal position, then there is no question of even considering the proposal of merger which is pending before the concerned authorities for its approval or sanction. According to Mr. Shah, if dehors the provisions of law such sanction is accorded and if the assets along with all rights and liabilities of the

respondent No.5 bank would get merged with the respondent No.6 bank, then it would lead to an irreversible situation and therefore, according to Mr. Shah, this Court must entertain this petition and grant appropriate relief before the actual merger takes place.

9.2 According to Mr. Shah, there is no substance or merit in the preliminary objection raised by the respondents as regards the maintainability of this petition on the ground that a Cooperative Society not being the "State" within the meaning of Article 12 of the Constitution of India, would not be amenable to writ jurisdiction under Article 226 of the Constitution. Mr. Shah submitted that merger under Section 115A(4) of the Act, could not be called in question before any Court. According to Mr. Shah, there is no alternative remedy available, and therefore, such action of the authorities would be amenable to judicial review under Article 226 of the Constitution.

9.3 Mr. Shah also submitted that the Reserve Bank of India, in its Circular dated 2nd February, 2005, has made it abundantly clear that there are no provisions for merger of a State Cooperative Bank with a Multi State Co-operative Bank and if such is the stand of the RBI, then there is no question of looking into the proposal of the merger. Mr. Shah also submitted that this petition in the nature of a public interest litigation is substantially for enforcement of the statutory provisions of the Act and therefore, the petition is maintainable. Mr. Shah in support of his contentions relied on the following case law:-

1. Dr. D.C. Wadhwa & ors. Vs. State of Bihar and ors - AIR 1987 SC 579;

2. Iqbal Singh Narang & ors. Vs. Veerang Narang - (2012) 2 SCC 60.

10 Legal submissions on behalf of the respondents: Mr. P.K. Jani, learned Government Pleader appearing for the respondents Nos. 1 and 2, Mr. S.N. Soparkar, learned Senior Counsel appearing for the respondent No.4, Mr. Amit Panchal, learned counsel appearing for the respondent No.7, Mr. K.S. Nanavati, learned Senior Advocate appearing for the respondent No.6 bank, Mr. M.K. Shah, learned counsel appearing for the respondent No.8 in one voice submitted that the present petition in the nature of a public interest litigation is not maintainable. Learned counsel for the respondents vehemently submitted that the petition is lacking in bonafide and it is apparent that the present petition is at the instance of the Directors and other office bearers of the respondent No.5 bank who were found to have indulged in criminal misappropriation to the tune of crore of rupees and thereby leading the respondent No.5 bank to a situation whereby it may go into liquidation if not merged with the respondent No.6, a Multi State Co-operative Bank. Learned counsel for the respondents submitted that the issue which has been raised no way concerns the public at large. The petitioner, which is a non-governmental

organization has no locus to raise such an issue in the name of public interest. Learned counsel appearing for the respondents in support of their contentions relied on the following case law:-

1. P. Seshadri Vs. S. Mangati Gopal Reddy, reported in (2011) 5 SCC 484;

2. Ashokkumar Pandey Vs. State of West Bengal, reported in (2004) 3 SCC 349

Analysis:

11 Having heard learned counsel for the respective parties and having gone through the materials on record, in our opinion, two questions fall for our consideration in this petition. First, as to whether there is any element of public interest involved in the question which has been raised by the petitioner, and secondly, whether the petitioner, a nongovernmental organization is entitled to any of the reliefs prayed for in the petition, more particularly a relief in the nature of a declaration as regards the legality and validity of a proposed merger of a State Co-operative Bank with a Multi State Co-operative Bank.

12 Ordinarily, Court would allow litigation in public interest if it is found :

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii)That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii)That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv)That such person or group of persons is not a busy body of meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v)That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi)That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii)That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii)Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix)That the person approaching the Court has come with clean hands, clean heart and clean objectives;

13 That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

14 In the well-known pronouncement of the Supreme Court in the case of the Janata Dal v/s. H.S.Chowdhary and others, reported in AIR 1993 SC 892, the Supreme Court in detail has explained Public Interest Litigation - Its origin and meaning. In paragraphs 48, 49, 50 and 51, it has been observed as under :-

"48. The question, "what 'PIL' means and is?" has been deeply surveyed, explored and explained not only by various judicial pronouncements in many countries, but also by eminent Judges, jurists, activist lawyers, outstanding scholars, journalists and social scientists etc. with a vast erudition. Basically the meaning of the words 'Public Interest' is defined in the Oxford English Dictionary, 2nd Edition, Vol. XII as "the common well being .....also public welfare".

49. In Shrouds Judicial Dictionary, Vol. 4 (IV Edition), 'public interest' is defined thus: "PUBLIC INTEREST (1) A matter of public or general interest "does not mean that which is interesting as gratifying curiosity or a love of information or -amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected". [per Cambell C.J., R. v. Bedfordshire, (1855) 24 LJQB 81 (84)].

50. In Black's Law Dictionary (Sixth Edition), 'public interest' is defined as follows:

> Public Interest - Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national government ....."
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> 51. The expression 'litigation' means a legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decisions explaining the expression 'PIL' in its wider connotation in the present day context in modern society, a few of which we will refer to in the appropriate part of this judgment."

15 Applying the aforesaid tests to the facts of the present case, this Court owes a duty to see as to whose cause the petitioner is promoting when a petition is filed to pursue a Public Interest Litigation? Whose fundamental or other rights, if any, have been infringed? Who is to be relieved against any wrong and injury caused to him for which he cannot come to this Court? These are some of the vital questions which are to be answered to test maintainability of any petition which purports to be in 'Public Interest ' and for a 'Public Cause'.

16 This concerns the locus standi of the petitioner. In yesteryear, and perhaps even in the not too distant a past, the one recurring theme that bedevilled administrative-law and judicial review most was the vexed question of locus standi. But there is a much wider concept of locus standi now. It now takes in any one who is not a mere "busy-body" or a "meddlesome interloper" and all that need be shown is a sufficiency of interest in the matter to which the petition relates. We have, "actio popularis" by which any citizen can enforce law for the benefit of all, against public authorities touching their statutory duties.

> We are of the view that the petitioner, a nongovernmental organization situated at Ahmedabad could not be said to be litigating a matter of public interest. We have noticed that the petitioner has raised a question which could be said at the most to be a question of law, but in no manner affecting the public interest at large. The whole issue in the petition relates to the banking system, more particularly as to under what circumstances one Co-operative Bank could merge with an another Co-operative Bank. We have also noticed that there are no pleadings worth the name except raising a question of law as to in what manner the larger public interest would be affected if the respondent No.5 bank gets merged with the respondent No.6 bank. No final orders of merger

has been passed till date and the matter is still at the stage of considering the proposal. It is for the Reserve Bank of India and other authorities to consider the viability, the legality and the validity of the proposal of merger of the respondent No.5 bank with the respondent No.6 bank. The Reserve Bank of India being the apex bank of this country would be the best authority, being also an expert authority, so far as banking is concerned, and would definitely look into all the aspects of the matter and take an appropriate decision in accordance with the law.

17 We are of the opinion that it is not for this Court to look into such issues, more particularly when we find that there is no public interest as such involved in the matter. Besides the above, we are also not convinced with the bonafide of the petitioner in filing the present petition in the nature of a public interest litigation, and we find some substance in the allegations of all the respondents that this petition is at the behest of the Directors and other erring officers of the respondent No.5 bank against whom criminal prosecution has been instituted. The present petition has also not been filed by the petitioner on behalf of the depositors or shareholders of the respondent No.5 bank so as to protect their interest. On the contrary, the depositors and the shareholders of the respondent No.5 bank have opposed this petition and are at one in submitting that the proposed merger would be in the over all interest of the depositors of the respondent No.5 bank.

18 At least from the stand taken by the depositors and the shareholders of the respondent No.5 bank, one thing is clear that they have no objection if the respondent No.5 bank gets merged with the respondent No.6 bank and naturally they would not have any objection if their hard earned money deposited in the respondent No.5 bank is saved by the merger. Whether such a merger is legally permissible or not is for the authorities to decide.

19 In our opinion, a litigation does not become a public interest litigation merely because questions of law of general public importance arise in that case. Such important questions are often decided in private litigation and those help the public in general, but public interest litigation is different. The public interest litigation is where the interest, which the Court pronounces upon, is itself in a representative capacity a public interest. The Courts have jurisdiction to decide all points of law only when those arise in relation to and are incidental to questions raised by parties affecting their own rights, liabilities and interest. In Bandhua Mukti Morcha Vs. Union of India, AIR 1984 SC 802, the Supreme Court had laid down parameters for public interest litigation. According to the Supreme Court, where, however, the fundamental right of a person or class of persons is violated but who cannot have resort to the Court on account of their poverty or disability or socially or economically disadvantaged position, the Court can and must allow any member of the public acting bonafide to espouse the cause of such person or class of persons

and move the Court for judicial enforcement of the fundamental right of such person or class of persons. Therefore, it is ordinarily for enforcement of fundamental rights, that too on behalf of persons who are in a disadvantageous position on account of poverty or socially or economically disadvantageous position that public interest litigation can be entertained. Such is not the position in the present case.

20 Reference could be made to the observations made by the Supreme Court in the case of P. Seshadri Vs. S. Mangati Gopal Reddy and ors. - (2011) 5 SCC 484. The Supreme Court made the following observations in paragraph 18:-

> ".....The parameters within which public interest litigation can be entertained by this Court and the High Court, have been laid down and reiterated by this Court in a series of cases. By now it ought to be plain and obvious that this Court does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals i.e. busybodies, having little or no interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard. Otherwise the petition is liable to be dismissed at the threshold."

21 Reference could also be made to the observations made by the Supreme Court in Ashok Kumar Pandey Vs. State of West Bengal, reported in (2004) 3 SCC 349. The Supreme Court passed the following observations in paragraph 12:-

> "Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs."

22 We shall now look into the case law which has been relied upon by the learned counsel appearing for the petitioner. In the case of Dr. D.C. Wadhwa (supra), the question raised before the Supreme Court was one relating to the power of the Governor under Article 213 of the Constitution to re-promulgate Ordinances from time to time without getting them replaced by Acts of the legislature. The question which fell for the consideration of the Supreme Court was as to whether the Governor could go on re-promulgating Ordinances for an indefinite period of time and thus, take over to himself the power of the Legislature to legislate though that power is conferred on him under Article 213 only for the purpose of enabling him to take immediate action at a time when the Legislative Assembly of the State is not in session or when in a case where there is a legislative council in the State, both Houses of Legislature are not in session. The appellant of that case Dr. D.C. Wadhwa was a Professor of Political Science and he challenged the validity of the practice of the State of Bihar in promulgating and re-promulgating ordinances on a massive scale and in particular challenged the constitutional validity of three different ordinances issued by the Governor of Bihar. It was contended before the Supreme Court that the appellant Dr. D.C. Wadhwa, a Professor of Political Science had no locus-standi to maintain a writ-petition on the ground that the appellant was an outsider having no legal interest to challenge the validity of such practice. The Supreme Court, over-ruling the preliminary objection as regards the locus-standi , made the following observations, which are being relied upon by the learned counsel for the petitioner to make good his case that the present public interest litigation is maintainable at the instance of the petitioner who is a non-governmental organization. The observations made by the Supreme Court in paragraph 3 are as under:-

> ".....Besides petitioner No.1 is a Professor of Political Science and is deeply interested in ensuring proper implementation of the constitutional provisions. He has sufficient interest to maintain a petition under Article 32 even as a member of the public because it is a right of every citizen to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional provisions. Of course, if any particular ordinance was being challenged by petitioner No.1 he may not have the locus standi to challenge it simply as a member of the public unless some legal right or interest of his is violated or threatened by such ordinance, but here what petitioner No.1 as a member of the public is complaining of is a practice which is being followed by the State of Bihar of re-promulgating the ordinances from time to time without their provisions being enacted into Acts of the Legislature. It is clearly for vindication of public interest that petitioner No.1 has filed these writ petitions and he must therefore be held to be entitled to maintain his writ petitions."

23 We are of the view that the observations referred to above passed by the Supreme Court would not be of any avail to the petitioner as the Supreme

Court in the peculiar facts of the case took the view that the petition at the instance of Dr. D.C. Wadhwa, a Professor of Political Science was maintainable on the principle that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. The Supreme Court in the facts of that case took the view that if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, then the appellant of that case as a member of the public could be said to possess sufficient interest to challenge such practice by filing a writ-petition and it would be the constitutional duty of the Court to entertain the writ-petition and adjudicate upon the validity of such practice.

24 In Iqbal Singh Narang (supra), the question before the Supreme Court was as to whether even if the Rent Controller under the East Punjab Urban Rent Restriction Act, 1949 is held not to be a "Court", then whether any private complaint would be maintainable in respect of statements alleged to have been falsely made before it. The Supreme Court while answering the aforesaid question observed that the Rent Controller, being a creature of the statute has to act within the four corners of the statute and could exercise only such powers as had been vested in him by the statute. The ratio of Iqbal Singh Narang (supra) has been relied upon to fortify the contention raised on behalf of the petitioner that the authorities under the Act of 1961 and the Act of 2002 being a creature of the statute, is duty bound to act within the four corners of the provisions of the Act of 1961 and the Act of 2002, and as there are no provisions in both the Acts providing for merger of a State Cooperative Society with a Multi State Co-operative Society, the statutory authorities under the Act including the Reserve Bank of India being the apex body of the country, could not sanction the proposal of merger of the respondent No.5 bank with the respondent No.6 bank.

25 There could not be any dispute with such a proposition of law, as the same is a well settled principle. However, relying on the ratio of Iqbal Singh Narang (supra), the relief as prayed for in the petition could not be granted as the Court owes a duty to consider many other aspects of the matter. It is now well settled that a decision is an authority in the facts of a particular case and even a minute variation in the facts of another case may make the said decision inapplicable to the other case. In this regard, the observations of the Supreme Court in paragraph 12 of the judgment in the case of STATE OF ORISSA vs. MD. ILLIYAS reported in (2006) 1 SCC 275 would be relevant, which reads thus:

> "Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said

by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basis postulates-

(i). findings of material facts, direct and inferential. An inferential find of facts is the inference which the Judge draws from the direct, or perceptible facts.

(ii). statements of the principles of law applicable to the legal problems disclosed by the facts, and

(iii). judgment based on the combined effect of the above. A decision is an authority for what is actually decides.

26 The observations of the Supreme Court in paragraph 10 of the judgment in the case of UNION OF INDIA vs. DHANWANTI DEVI reported in 1996 (6) SCC 44 would also be relevant, which read thus:

"Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents."

Thus, the reliance placed by the learned counsel for the petitioner on the aforesaid two decisions is of no avail to the petitioner.

27 Having bestowed our thoughtful consideration to the submissions made on either side and on careful consideration of all other aspects of the matter, we are of the opinion that there is no element of any public interest involved in the question which has been raised by the petitioner in the present petition. We do not find any merit in this petition and in our view the petition deserves to be dismissed and is accordingly dismissed. In view of the order passed in the main matter, all the connected CAs have become infructuous and are accordingly disposed of.