

(2013) 11 CAL CK 0016

Calcutta High Court

Case No: G.A. No. 1826 of 2013 and C.S. No. 212 of 2013

Soumyendra Roy
Choudhury

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision: Nov. 29, 2013

Citation: (2014) 185 CompCas 330

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Judgement

Soumen Sen, J.

The decision of the Nomination Committee rejecting the nomination of the petitioner for the election to the board of the respondent-UCO Bank under the category of a shareholder director is the subject matter of challenge in this application. The instant case has a chequered history.

2. Initially, the plaintiff has filed an application being C.S. No. 159 of 2011 in which the plaintiff has challenged a notice dated July 6, 2011, of the defendant-bank to withdraw Agenda No. 3 from the then proposed annual general meeting to be held on July 14, 2011.

3. Agenda No. 3 was for election of a director by the shareholders of the bank other than the Central Government. There is a provision for such election in the acts and statutory instruments mentioned in the agenda itself. The petitioner approached the court with the grievance that although his nomination was validly tendered, but the defendant had wrongfully rejected the said nomination. The public shareholding of the bank at the relevant time was below 32 per cent. The bank could have two directors from amongst the shareholders. There was one who was continuing, hence, there was one vacancy to be filled up from the shareholders.

4. According to the rules, the nomination ought to be scrutinised by the Nomination Committee of the board in terms of the existing guidelines of the Reserve Bank of

India. Furthermore, the rules provided that the nomination had to be rejected with reasons. The impugned notice dated July 6, 2011, was not issued by the Nomination Committee. It was issued by the chairman and the managing director and secondly, there was no reason why the nomination of the petitioner has not been accepted. The bank filed affidavit-in-opposition stating various reasons for rejection of such nomination. The reasons were financial impropriety on the part of the petitioner and his holding an office of profit, in his capacity as a retired bank employee, relying on some Reserve Bank and the Government circular.

5. The learned single judge found that no proper reason was given for rejecting the said nomination and, accordingly, the learned single judge *prima facie* opined that the bank ought not to have withdrawn the said agenda from its annual general meeting held on July 14, 2011. However, on the basis of the submission made on behalf of the bank that the bank is prepared to consider the nomination afresh and to decide whether the nomination is to be accepted or not in accordance with law, a direction was given to the board of directors to convene a fresh general meeting to consider Agenda No. 3 of the annual general meeting and the Nomination Committee of the board was given liberty to invite other nomination and also to consider them in accordance with law.

6. The hon"ble Division Bench modified the said order to the extent that once the nominations were filed in accordance with the provisions of rules, it was incumbent upon the bank to scrutinise those nominations and, accordingly, the question of filing fresh nomination would not arise. The bank was directed to examine all the three nominations by the Nomination Committee and in case of rejection, the Nomination Committee was directed to assign reasons. Such exercise was directed to be completed before the annual general meeting which was to be held in July, 2013. It was observed that the bank would take up such agenda in a meeting to be held prior to holding of the annual general meeting.

7. It is the order of rejection passed by the Nomination Committee that has resulted in filing the present suit being C S. No. 212 of 2013 in which an interlocutory application has been filed seeking mandatory injunction and other reliefs.

8. Mr. S.B. Mukherjee, learned senior counsel appearing with Mr. S.N. Mookherjee, learned senior counsel, submitted that in terms of the aforesaid orders, it was the obligation of defendant No. 1 to scrutinise the nominations filed which include the nomination of the petitioner and the defendants Nos. 11 and 12. The agenda with regard to the nominations for shareholder director were required to be taken up prior to the next annual general meeting scheduled to be held in July, 2013. The purpose of consideration of such nomination was to ensure that candidates who could then be elected as a shareholder director in the annual general meeting to be held in July, 2013 in terms of the provisions of section 9(3)(i) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with the Banking Regulation Act, 1949 and Nationalised Banks (Management and

Miscellaneous Provisions) Scheme, 1970. Defendant No. 1 by a letter dated May 14, 2013, informed the petitioner that the Nomination Committee of defendant No. 1 on examination of all the nominations did not find any candidate "fit and proper" and, accordingly, rejected all the three nominations. The petitioner by a letter dated May 21, 2013, placed further facts for consideration which would show and establish that the petitioner was the only person with valid nomination as defendants Nos. 11 and 12 did not satisfy the "fit and property criteria".

9. The petitioner appeared before the Nomination Committee in May, 2013. In fact, he was the only candidate who appeared at the hearing before the Nomination Committee.

10. In the meeting, the said Nomination Committee orally represented to the petitioner that the nomination of the petitioner was rejected and reasons for rejection would be communicated.

11. Thereafter on June 5, 2013, the petitioner was surprised to come across a notice published by defendant No. 1 in a daily issue of the Business Standard, Kolkata edition for holding the 10th annual general meeting of the shareholders of defendant No. 1 on June 28, 2013, without any agenda for election of the shareholder director. The petitioner although is a shareholder of defendant No. 1 but did not receive any notice convening the annual general meeting for June 28, 2013, though the petitioner is entitled to 21 days' clear notice of such annual general meeting.

12. All of a sudden on June 25, 2013, the petitioner got a message in the evening from the company secretary of defendant No. 1 to check his e-mail and on checking, the petitioner discovered that an electronic mail dated June 24, 2013, had been sent to the petitioner communicating purported reasons for rejecting the nomination of the petitioner for election as shareholder director. The communication was deliberately sent belatedly to ensure that the petitioner is unable to take any legal steps against such wrongful rejection. No copy of the letter had been received by the petitioner earlier.

13. The purported decision communicated by electronic mail is a fraudulent act on the part of the defendant.

14. The decision is arbitrary and mala fide and has been taken only to deprive the petitioner of his right to be elected as a shareholder director. There are no criteria as alleged in the communication for determining fit and proper candidate as per the applicable RBI guidelines which are the only guidelines applicable. Both the notifications referred to in the purported decision of the Nomination Committee dated October 13, 2011 and December 10, 2007; are not applicable and in particular to election of directors and shareholders other than those of the Government of India.

15. The said two notifications were not relied on as a bar to the election of the petitioner as a shareholder director by the defendant in the earlier proceeding or at the hearing before this hon"ble court in the earlier suit. The purported decision and the reasons given by the Nomination Committee is ex facie illegal, mala fide and with ulterior motive. The bank is estopped from relying on the aforesaid two notifications or relying on them. The purported decision is contrary to the provisions of the Banking Regulation Act. The purported decision infringes on the shareholder"s right to have an elected director. The reasons and the purported decision are all afterthoughts.

16. The criteria relied upon only apply to appointments made by the Government and are not applicable in so far as the petitioner is concerned. The criteria relied on has no statutory force and cannot in any manner be used to bar the election of the petitioner as a shareholder director of defendant No. 1. The purported decision and the reasons are absolutely mala fide. The reasons and the purported decision have been made with an intention to deceive the petitioner and other shareholders. The respondents have acted with a pre-determined mind and only with the intention to prevent the petitioner from being elected as a shareholder director of defendant No. 1.

17. It was submitted that defendants Nos. 1 to 10 acted arbitrarily, mala fide and capriciously in denying the petitioner the right to seek election as a shareholder director of defendant No. 1. The right to elect directors which have been conferred on such shareholders by virtue of the provisions contained in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Regulation Act, 1949, the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 and the UCO Bank (Shares and Meetings) Regulations, 2003 referred to above have not been followed and respondents Nos. 1 to 10 have acted in breach thereof.

18. The petitioner states that defendants Nos. 11 and 12 are not fit and proper candidates as defendant No. 11 is disqualified by reason of holding substantial interest in a company, namely, M/s. Paraboli Drugs Ltd., which availed of finance from defendant No. 1 and defendant No. 12 is already appointed as shareholder director of Dena Bank.

19. Mr. S.N. Mookherjee has referred to the notice dated July 14, 2011, Agenda No. 3 and submitted that curiously the said agenda was omitted from the Agenda of the annual general meeting of defendant No. 1 held on June 28, 2013.

20. The said Agenda No. 3 is reproduced hereinbelow:

"3. To elect one director from amongst the shareholders, other than the Central Government, in respect of whom valid nominations are received in terms of section 9(3)(i) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as the "Act") read with the Banking Regulation Act,

1949 and the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 (hereinafter referred to as the "Scheme") and the UCO Bank (Shares and Meetings) Regulations, 2003 (hereinafter referred to as the "Regulations") made pursuant to section 19 of the Act and Notification No. DBOD No. BC No. 46 and 47/29.39.001/2007-08, dated November 1, 2007, issued by Reserve Bank of India (hereinafter referred to as "RBI Notification")."

21. It is submitted that in view of the present shareholding of the bank in terms of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2006, the shareholders would be entitled to elect two directors from amongst themselves. It would appear from the notice of the 8th annual general meeting of the shareholders to be held on July 14, 2011, that in view of the public shareholding at the relevant time was more than 32 per cent shareholders were entitled to elect three directors from amongst the shareholders and since two directors were already on the board, the bank invited nomination for election of one director from amongst the shareholders other than the Central Government. Accordingly, the notice specified that the board of directors have decided to elect one shareholder director. The said notice specified the criteria and qualifications required for being elected as a director of the bank which is reproduced hereinbelow:

"In terms of section 9(3A) of the Act, a candidate, being a shareholder of the bank and who desires to be a director of the bank shall--

(A) have special knowledge or practical experience in respect of the one or more of the following matters, namely :--

❖ Agriculture and rural economy;

❖ Banking;

❖ Co-operation;

❖ Economics;

❖ Finance;

❖ Law;

❖ Small Scale industry;

❖ Any other matter the special knowledge of, and practical experience in, which would, in the opinion of the Reserve Bank of India is useful to the bank.

(B) represents the interest of depositors; or

(C) represents the interest of farmers, workers and artisans.

In terms of section 9(3AA) of the Act a candidate being a shareholder of the bank and would desire to be director of the bank should possess "fit and proper" status

pursuant to guidelines issued by the Reserve Bank of India in this regard. Further, the elected director should execute the deed of covenants and is required to furnish annual declarations as prescribed by the Reserve Bank of India in this regard."

22. Of all the disqualifications referred to in the said notice reference may be made to the following clause, namely:

"(d) if he holds any office of profit under any nationalised bank or the State Bank of India constituted under sub-section (1) of section 3 of the State Bank of India Act, 1955, or any subsidiary bank as defined in section 3 of the State Bank of India (Subsidiary Banks) Act, 1959, except for holding the post of whole-time director, including the managing director and directors nominated under clauses (e) and (f) of sub-section (3) of section 9 of the Act from among the employees of the bank; and

(B) If he is not found to be "fit and proper" person in terms of Notification of the Reserve Bank of India--DBOD. No. BC. No. 46/29.39.001/2007-08 and DBOD No. 47/29.39.001/2007-08, dated November 1, 2007".

23. Pursuant to clause 9(4) of the Scheme, an elected director is entitled to hold office for three years and shall be eligible for re-election; provided no such director shall hold office continuously for a period exceeding six years.

24. A shareholder desirous of contesting the election of the director of the bank from amongst the shareholders other than the Central Government, is required to submit:

(a) duly filled in "declaration form" along with testimonials, viz., bio-data, certificates of educational qualification, experience;

(b) "Undertaking by candidate" pursuant to fit and proper Guidelines issued by the Reserve Bank of India and required attachments thereat.

25. The nomination amongst others would be subjected to scrutiny by the Nomination Committee of the board in terms of the fit and proper Guidelines dated November 1, 2007, issued by the Reserve Bank of India. It further provides that if there is only one valid nomination for the vacancy to be filled in by the election, the candidate so nominated shall be deemed to be elected forthwith and his/her name and address shall be published as so elected. In such an event there shall not be any election at the meeting convened for the purpose and the said agenda item will not be taken up at the meeting.

26. In challenging the purported decision of the Nomination Committee dated May 24, 2013, it appears to me that the Nomination Committee in arriving at the said conclusion that the petitioner is disqualified and not a fit and proper person had referred to and relied upon guidelines issued by the Reserve Bank of India being Circular No. DBOD No. BC No. 47/29.39.001/2007-08, dated November 1, 2007, the Government of India Notification dated 16/07/2010-BOI, dated October 13, 2011,

effective from June 1, 2011 and guidelines dated December 10, 2007, for nominating directors on public sector banks.

27. The reference to the said two Central Government guidelines, according to learned senior counsel, could not have been relied on or adopted by the Nomination Committee, inter alia, for the following reasons:

"(a) The said guidelines apply only to "part time" non-official directors nominated by the Central Government and have no manner of application to the shareholder directors who are elected. The said guidelines apply only to nominated directors of the Government as would be evident from sections 9(3)(a) to 9(3)(h) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as "Acquisition Act") which states:--

"(a) not more than four whole-time directors to be appointed by the Central Government after consultation with the Reserve Bank ;

(b) one director who is an official of the Central Government to be nominated by the Central Government:

Provided that no such director shall be a director of any other corresponding new bank.

Explanation.--For the purpose of this clause, the expression "corresponding new bank" shall include a corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);

(c) one director possessing necessary expertise and experience in matters relating to regulation or supervision of commercial banks, to be nominated by the Central Government on the recommendation of the Reserve Bank; . . .

(e) one director, from among such of the employees of the corresponding new bank who are workmen under clause(s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), to be nominated by the Central Government in such manner as may be specified in a scheme made under this section;

(f) one director, from among the employees of the corresponding new bank who are not workmen under clause(s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), to be nominated by the Central Government after consultation with the Reserve Bank;

(g) one director who has been a chartered accountant for not less than fifteen years to be nominated by the Central Government after consultation with the Reserve Bank;

(h) subject to the provisions of clause (i), not more than six directors to be nominated by the Central Government;"

(b) No resolution and/or meeting has been disclosed at which the said guidelines were purportedly adopted by the Nomination Committee. The said guidelines was not in existence when the plaintiff/petitioner filed his nomination.

(c) The Nomination Committee did not have any authority to adopt the said Central Government guidelines. The RBI Circular dated November 1, 2007, which admittedly applies for the purpose of judging the "fit and proper status" of candidates for election as shareholder directors, does not authorise or permit the Nomination Committee to add to the criteria mentioned therein.

(d) The Banking Companies (Acquisition and Transfer of Undertakings) Act provides that it is only the guidelines laid down by the RBI that are applicable. As such, no other guideline can be applied as would be evident from section 9(3AA) of the Act which states as follows:--

"(3AA). Without prejudice to the provisions of sub-section (3A) and notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, no person shall be eligible to be elected as director under clause (i) of sub-section (3) unless he is a person having fit and proper status based upon track record, integrity and such other criteria as the Reserve Bank may notify from time to time in this regard."

(e) The Nomination Committee, in any event, could not have applied or adopted such guidelines while determining the "fit and proper" status of petitioner's candidature for election as shareholder director. This is because the said guidelines were neither referred to in the notice dated June 3, 2011, nor in the earlier proceedings between the same parties before this hon"ble court. Further, the said guidelines were not referred to in the relevant RBI Circular and there is nothing on record to show that the guidelines were adopted in consultation with the RBI. No date of adoption of such extra criteria has been disclosed.

(f) Though the petitioner had filed his nomination in 2011, the said guidelines were not applied then. In fact, UCO Bank had sought clarifications from the Government as well as from the RBI with respect to allegations regarding petitioner's nomination on entirely different and unconnected grounds, i.e., the petitioner holding an "office of profit" and being an office bearer of an officers' association. Mr. Mukherjee relying upon the letter dated July 10, 2011, annexed to the affidavit-in-opposition of the bank at pages 124-126 and paragraph 46 of the said affidavit submitted that no clarification was sought on any other aspect of the petitioner's nomination. It was submitted that the respondents in spite of a notice to produce dated August 22, 2013, had failed to disclose the clarifications which they purported to have received from the Reserve Bank of India in respect of their queries raised in the letter dated July 10, 2011. It was submitted that the hon"ble Division Bench having held that there would be no need for any fresh nomination, the nomination filed by the petitioner could not have been rejected on any grounds

other than those which were in existence in 2011 inasmuch as no new criteria could have been introduced. In this regard learned counsel has relied upon the decision of the hon"ble Supreme Court reported in [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), which states (page 858):

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in [Commissioner of Police, Bombay Vs. Gordhandas Bhanji](#),

". . . public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older. A Caveat."

(g) The UCO Bank also filed a supplementary affidavit in the instant proceeding affirmed on September 12, 2013, disclosing a purported notification dated September 3, 2013, issued by the Ministry of Finance, Department of Financial Services, Government of India, which stated that it would be desirable that the Government guideline dated June 1, 2011, regarding appointment of part time non-official directors be kept in mind while determining the fit and proper status of candidates to be elected as shareholder directors. The purported notification is clearly an afterthought and has been procured by the respondents to try and render infructuous the instant proceedings and amounts to wrongful interference with the course of justice. The purported notification is also in excess of jurisdiction and contrary to the provisions of the Banking Regulation Act, 1949 and the Banking Companies (Acquisition and Transfer of Undertakings) Act.

(ii) The petitioner was over 65 years of age even on the date of filing his nomination in 2011. However, the maximum age limit was not shown as a ground for rejection at that stage. Further, the petitioner has disclosed several replies to queries under RTI from several nationalised banks stating that there was no maximum age limit for election as shareholder director. Even the RBI clarified that it had not issued any specific guidelines or instructions with regard to maximum age limits disclosed in the affidavit-in-reply as also in the supplementary affidavit. It would clearly show that even the RBI clarified that it had not issued any specific guidelines or instructions with regard to maximum age limits. In any event, the articles of

association of the UCO Bank do not contain any age restrictions for being elected as shareholder director. Further, even the Companies Act, 1956, does not contain age restrictions for directors other than the managing director or whole-time director. Section 2 of the Banking Regulation Act, 1949, clearly provides that the same is not in derogation of the Companies Act, 1956.

(iii) Section 10A(2A) of the Banking Regulation Act, 1949, prohibits any director from holding office continuously for a period exceeding 8 years. The petitioner has admittedly not held office for a continuous period in excess of six years. As such, the Nomination Committee could not have suo motu and arbitrarily rejected the nomination of the petitioner on such score.

(iv) Further, the "scheme" of the UCO Bank with respect to, inter alia, election of shareholder directors, also recognises the RBI as the only authority to lay down criteria for determining fit and proper status of candidates. The scheme does not mention age of previous tenure as possible disqualification criteria. There is merely an embargo on any elected director holding office for a continuous period exceeding six years. It is an admitted position that the petitioner never held office for a continuous period exceeding six years.

(v) The Banking Companies (Acquisition and Transfer of Undertakings) Act clearly specifies that only the RBI can lay down criteria for determination of "fit and proper status". Though the RBI Circular states that the criteria mentioned therein are only "illustrative and not exhaustive", the same cannot be cited as a reason for the Nomination Committee of the UCO Bank to take over the mantle of the RBI. The RBI has not authorised the Nomination Committee to evolve its own criteria. It is only the RBI which can supplement or add to the criteria, and any attempt by any other entity to do so would be in contravention of statute and in excess of jurisdiction."

28. It is submitted that under the existing guidelines of the bank, the petitioner being the only candidate to fill the vacancy of shareholder/director shall be deemed to be elected and his name and address shall be published as so elected. In such event, there shall not be any election at the meeting convened for the purpose and the said agenda item will not be taken up at the meeting. It is submitted that the petitioner should be deemed to have been elected as shareholder director.

29. It is submitted that a shareholder director and nominated director stand on a different footing altogether and the Central Government guidelines regarding nominated directors cannot be made applicable to the shareholder directors. The two separate guidelines issued by the Central Government relate to selection of nominated directors. The shareholder directors are not bound by the Central Government Guidelines.

30. It is submitted that disqualification can be either under the statute or the articles of association of the company or corporate democracy, that is to say restrictions imposed by the company in general meeting and not by the Nomination Committee

or the Central Government. The Companies Act itself does not provide for any age limit regarding election of directors. Reference may be made to sections 269, 274 and Schedule XIII of the Companies Act, 1956. The pro forma to be signed by a shareholder director requires him to answer if he had incurred any disqualification u/s 274 of the Companies Act. The exchange of correspondence between the parties would also indicate that parties were deliberating on the said issue.

31. The validity of a nomination has to be judged on the criteria as on the date of filing of the nomination, which is June 28, 2011. The purported grounds on which the nomination has been rejected were not in existence on the date of filing of such nomination. Secondly, no disclosure has been made by the defendants or the Nomination Committee as to when the Central Government guidelines were purported to have been adopted by the Nomination Committee.

32. It is submitted that the Nomination Committee or its members are not independent of the company. It is submitted that refusal of any interim order in the instant suit would tantamount to dismissal of the suit which may take years to decide.

33. It is submitted that the decision of the Nomination Committee is illegal, beyond jurisdiction and non est in the eyes of law.

34. Defendants Nos. 11 and 12 have been served with the notice of motion of the application during the course of hearing but none of them has chosen to come forward to challenge the rejection of their nomination. During the pendency of the suit, defendant No. 6 who was a shareholder director has ceased to hold office by efflux of time. Advertisements have also been duly published under Order 1, rule 8 of the Code of Civil Procedure, 1908.

35. It is submitted that in appropriate cases an interim order, even if it equates to the final relief in the suit, can be granted. The petitioner relied upon the following cases:

(i) [1970] 1 All ER 1091 (Ch. D) (Woodford v. Smith);

(ii) [1971] 3 All ER 1175 (CA) (Acrow (Automation) Ltd. v. Rex Chainbelt Inc.);

(iii) [1963] 2 All ER 1063 (CA) (Heywood v. B.D.C. Properties Ltd.);

(iv) [2007] 139 Comp. Cas. 122 (Cal) page 130, (paragraphs 40, 41-44) (Hindustan Development Corporation v. Modiluft Ltd.);

(v) (89 CWN 924) (paragraphs 35 and 38) (Chandra Jhunhunwalla v. State of West Bengal); and

(vi) [Dorab Cawasji Warden Vs. Coomi Sorab Warden and others,](#)

36. Mr. Anindya Kumar Mitra, learned senior counsel appearing with Mr. Utpal Bose and Mr. Debductta Sen submitted that the challenge to the decision of the

Nomination Committee in disqualifying the petitioner to contest the election is untenable in law and in fact.

37. The plaintiff/petitioner along with two other shareholders of the UCO Bank submitted respective candidatures to the UCO Bank. In compliance with direction contained in the RBI Circular dated November 1, 2007, the Nomination Committee comprising of three independent directors was constituted by the UCO Bank. The Deputy Secretary of Finance, Government of India, one chartered accountant and a shareholder director of the UCO Bank were the members of this Nomination Committee. None of them was whole-time director of the UCO Bank. No dispute has been raised as to the valid constitution of this Nomination Committee.

38. The Nomination Committee, at a meeting held on May 24, 2013, in the presence of the plaintiff and upon hearing him, rejected the nomination of not only the plaintiff but also of the two other candidates on overlapping grounds.

39. The plaintiff has filed the suit seeking various reliefs including cancellation of the decision of the Nomination Committee taken on May 24, 2013, which was communicated to the plaintiff by the bank's letter dated June 24, 2013.

40. Interlocutory application made by the plaintiff in the suit has been heard. The plaintiff has prayed for interlocutory order in terms of prayer (b) of the petitioner which is injunction directing defendants Nos. 1 to 10 to elect the petitioner/plaintiff as shareholder director of the bank. This is beyond the powers of those defendants.

41. The contention of the plaintiff that two other candidates have been rightly rejected having not found to be fit and proper person but the decision of the Nomination Committee that the plaintiff is not fit and proper person is invalid and, therefore, the plaintiff has become the only valid and sole candidate and is deemed to be elected forthwith under regulation 66 of the UCO Bank's Regulations is self-contradictory and without any basis. The first candidate, namely, Jai Dev Gupta was not considered a fit and proper person on the ground that his age was more than 65 years. The plaintiff was admittedly above 65 years when he filed nomination. Age limit is not a criteria mentioned in the RBI Circular. The plaintiff's contention is that application of age restriction is valid as against Jai Dev Gupta but not against the plaintiff. The third candidate, Mukesh Mohan has been considered not to be fit and proper person on the ground that he is a director of another bank, namely, the Dena Bank, which is not a criteria mentioned in the RBI Circular dated November 1, 2007. This contention of the plaintiff would mean that reference to a criteria in addition to the broad criteria mentioned in the RBI Circular is bad as against the plaintiff but valid as against the other two candidates. This argument is required to be rejected. Significantly, the plaintiff on his own submission, admits that criteria other than 3 illustrative broad criteria as mentioned in the RBI Circular can be evolved and applied by the Nomination Committee.

42. The main argument of the plaintiff that no criteria other than 3 broad criteria mentioned by the RBI Circular by way of illustration could be evolved and decided by the committee thus fails. The plaintiff cannot be considered to be the only candidate.

43. In dealing with the submission that the two criteria on which the nomination of the plaintiff was rejected is without jurisdiction and beyond that criteria laid down in the RBI Circular as those two criteria are not mentioned in the RBI Circular and, therefore, could not be considered by the Nomination Committee. It was submitted that such contention is not tenable, inter alia, for the following reasons in addition to what was argued in respect of the first contention, namely:

The criteria of age and 6 years" term as director were considered based on the RBI Circular. Paragraph (6) of the RBI Circular makes it clear that the RBI has directed the Nomination Committee to decide the matter based on the information provided in the signed declaration by the candidate. The signed declaration is in the form as prescribed by the RBI and all candidates including the plaintiff had filled it up without any objection. Two of the information required under the RBI format were the date of birth of the candidate and the details of the period during the candidate had been a member of the board of any bank. The date of birth would indicate the age of the candidate. Based on the information which were considered relevant by the RBI and provided by the plaintiff that his date of birth was December 1, 1943 and that he had served the UCO Bank for a term of six years continuously from November 14, 1991 to November 14, 1997 and again from February 18, 2002 to November 30, 2003, the Nomination Committee did not consider the plaintiff to be a fit and proper person. The declaration form submitted by the plaintiff with his answers has been filed in court with copy, to the plaintiff.

44. The tenure of 6 years term is provided also in the statutory scheme framed by the Government of India in exercise of power u/s 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

45. There are two categories of directors in the board of the bank--(1) Executive directors who are whole-time directors and their age restriction is 60 years. (2) Part time directors i.e., who are not whole-time directors by a Circular dated October 13, 2011. Three of such part time directors are nominated by the Government of India and their age restriction has been fixed at 65 years by the Government of India. The shareholder directors are also part time directors and, therefore, parity of age restrictions should be maintained. All part time directors should have same retiring age.

46. The RBI Circular does not contain any prohibition against formulation of any criteria in addition to three broad criteria mentioned by way of illustration in paragraph (c) of the RBI Circular. On the contrary, the RBI Circular clearly indicates that the Nomination Committee is to determine the fit and proper status of the

candidates based on the information provided in the signed declaration and three broad criteria mentioned in paragraph (c) expressed by way of illustration and not as exhaustive. Illustrations are not exhaustive and cannot curtail broadness of criteria. Learned senior counsel has referred to section 9 of the Acquisition Act, the decisions reported in AIR 1949 244 (Privy Council) and [Shambu Nath Mehra Vs. The State of Ajmer](#), and submitted that the illustrations may be looked into in order to understand the meaning of the section. They do not exhaust its meaning. Illustrations should not be read as extending the meaning of a section. They should also not be read as restricting its operation, especially so, when the effect would be to curtail a right which the plain words of the section would confer.

47. The Nomination Committee may add criteria under the general law and more so in this case as there is no prohibition against the Nomination Committee supplementing the broad criteria by other criteria which do not in any manner supplant the broad criteria. In this regard, learned senior counsel has relied upon [Sant Ram Sharma Vs. State of Rajasthan and Another](#),

48. The argument of the petitioner that the notifications dated October 13, 2011 and December 10, 2007, were not relied on as a bar to election of the petitioner as a shareholder director in the earlier proceeding and, therefore, cannot now be relied upon in this proceeding is sought to be answered by contending that in 2010, the plaintiff had submitted candidature as a shareholder director. At that time the other three part time directors nominated by the Government of India did not have the age restriction of 65 years. The Government Circular of 2007 regarding age, then prevailing, was in a totally different form, namely "The age of the director on the date of recommendation by appointments board should not be less than 40 years and preferably below 60 years. The upper age limit may be relaxed in case of outstanding experts, eminent persons . . ." Age restriction of 65 years was not applicable in 2010 to part time directors. The age restriction of 65 years was imposed in the year 2011 when the notification dated October 13, 2011, was issued by the Ministry of Finance, Government of India in respect of part time directors of banks nominated by the Government of India. The criteria of age restriction of 65 years was not necessary to bring about among part time directors.

49. It is submitted that the petitioner has failed to establish that the decision of the Nomination Committee is mala fide and arbitrary.

50. There is no adequate pleading of mala fide and arbitrariness. The words "mala fide" and "arbitrary" have just been used without particulars and without showing how it is mala fide and arbitrary. This has to be pleaded as held by hon"ble Supreme Court in [Forward Construction Co. and Others Vs. Prabhat Mandal \(Regd.\), Andheri and Others](#), [State of Bihar and Another Vs. P.P. Sharma, IAS and Another](#), and [1969] [Third Income Tax Officer, Mangalore Vs. M. Damodar Bhat](#),

51. In short, unless it is alleged that the members of the Nomination Committee had an animosity towards the candidate, there cannot be any question of mala fides. It is not the case of the petitioner that any of the three members of the Nomination Committee had any animosity towards the plaintiff/petitioner. The decision of the Nomination Committee contained in the minutes dated May 24, 2013, shows that they have acted uniformly and without discrimination in respect of all three candidates. The Nomination Committee is an independent body. There is really no pleading why the procedure adopted by the Nomination Committee is arbitrary. If age restriction of 65 years is considered relevant and is made applicable to three of the non-official part time directors, application of the same standard to non-official part time shareholder directors cannot be said to be arbitrary or not relevant. This is to achieve parity. In this case, criteria of age restriction and 6 years" term have been evolved upon being inspired by similar restrictions being made applicable to other non-official part time directors. It is to bring about uniformity and cannot be said to be arbitrary. In placing reliance upon the decision reported in [U.P. Financial Corporation Vs. Gem Cap \(India\) Pvt. Ltd. and Others](#), it was argued that the court is not to sit in appeal and interfere with the criteria even if the court would not have approved this criteria.

52. In dealing with the other defences of the interlocutory application, it was submitted that:--

(i) Prayer (b) of the petition which is the prayer pressed by the plaintiff is ex facie misconceived and not maintainable. Defendants Nos. 1 to 10 are bank and its directors. Defendants Nos. 1 to 10 do not elect any shareholder director. Therefore, no mandatory injunction directing defendants Nos. 1 to 10 to elect the petitioner as shareholder director should be issued.

(ii) The case is based on the circular issued by the RBI, but the RBI is not made a party. The court is being called upon to give a particular meaning to the RBI Circular by the plaintiff without making the RBI a party who is the author of the document and would have thrown light on what was intended by the RBI. It is submitted that in absence of the RBI, width and broadness of the RBI Circular should not be narrowed down.

(iii) The RBI has made the nomination committee as supreme authority to determine the fit and proper status of a candidate. The decision of the Nomination Committee is binding on the bank and the bank has no say in the matter.

(iv) Any person being aggrieved by the decision of the Nomination Committee has been given the right to prefer appeal to the chairman as per regulation 67 of the UCO Bank General Regulations. When a particular forum has been fixed by the aforesaid Regulations which are statutory, this hon"ble court in exercise of discretion should not pass any order on this application. Regulation 67 is like a forum selection clause.

53. Learned senior counsel has reminded this court of the limits of power of judicial review. It was argued that:--

(i) The court should not sit in appeal over the decision of the Nomination Committee, an administrative body.

(ii) The court should not delve deep into the matters to scrutinise the decision of a committee [Chinmoy Sarkar and etc. Vs. Md. Shaniat Hossain and etc.,](#) and [Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others,](#)

(iii) No case of mala fides or arbitrariness has really been made out. Sprinkling of the words "mala fide" and "arbitrary" on the petition is not adequate pleading.

(iv) It is not a case of committee adopting the Government guidelines. It is a case of committee drawing inspiration from the Government guidelines and framing the criteria accordingly.

(v) "Authority in which a discretion is vested can be compelled to exercise that discretion but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed" [Ganesh Bank, Kurundwad Ltd. and Others Vs. The Union of India \(UOI\) and Others,](#)

It is submitted that no prima facie case is made out and the petition should be dismissed.

54. It is submitted that the plaintiff has filed a suit instead of a writ petition knowing fully well that determination of suit takes much longer time.

55. In dealing with the submissions made with regard to the power of the court to grant mandatory interlocutory injunction at the interlocutory stage. It was submitted that the cases referred to by the petitioner relate to wrongful dispossession from immovable property and after restoration of possession thereof. [Dorab Cawasji Warden Vs. Coomi Sorab Warden and others,](#) was distinguished by contending that it was a case of transfer u/s 44 of the Transfer of Property Act, 1882. All the English judgments have been noted in paragraph 11 and Indian and Indian judgments have been noted in paragraph 15. The hon"ble Supreme Court has clearly held that relief of interlocutory mandatory injunction are granted generally to preserve or restore status quo of the last non-contested status which preceded the controversy. In the instant case, there is no question of status quo or preserving the status quo which preceded the pending controversy. The plaintiff was not a director when the impugned decision was given by the Nomination Committee on May 24, 2013. The last time the plaintiff was a director was in 2003. The guidelines given by the Supreme Court in paragraph 16 are three-fold. It is submitted that the plaintiff has failed to make out a strong case for trial. The balance of convenience is not in favour of the plaintiff and no irreparable or serious injury has been shown by the plaintiff. It is submitted that far from granting mandatory injunction, no injunction should at all be passed on the merits of the case as made out by the

plaintiff. There is no adequate pleading of balance of convenience or irreparable injury. [Dorab Cawasji Warden Vs. Coomi Sorab Warden and others](#), has been considered and explained by the Supreme Court in the judgment reported in [Metro Marins and Another Vs. Bonus Watch Co. Pvt. Ltd. and Others](#),

56. In [Metro Marins and Another Vs. Bonus Watch Co. Pvt. Ltd. and Others](#), the High Court had granted mandatory injunction. The hon"ble Supreme Court set aside that mandatory injunction and restore the order of dismissal of the interlocutory petition as passed by the trial court. In paragraphs 6 and 9 of the judgment [Dorab Cawasji Warden Vs. Coomi Sorab Warden and others](#), has been referred to and explained. Interim mandatory injunction can be granted only in exceptional cases coming within the exception noticed in the judgment reported in [Dorab Cawasji Warden Vs. Coomi Sorab Warden and others](#), The plaintiff, in this case, does not come within any of those exceptions mentioned in [Dorab Cawasji Warden Vs. Coomi Sorab Warden and others](#), The plaintiff has failed to make out any exceptional case of a strong prima facie case or a case of balance of convenience and irreparable injury.

57. At interlocutory stage, the court can only express prima facie view and issue interim order accordingly. In this case, the court has at the interim stage passed an order directing the UCO Bank to keep one post of elected shareholder vacant. At the highest this interim order can be continued until the question whether the plaintiff is a deemed director is decided at the hearing of the suit upon taking evidence and upon eliciting the views and determination of the meaning of the RBI Circular.

58. [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), has no application because the reasons for not considering the plaintiff as fit and proper person have been given in the minutes of the Nomination Committee as also in the letter forwarded to the plaintiff. The respondent authorities have supported the reasons in course of hearing.

59. The moot question that has arisen in this interlocutory application is the justiciability of the reasons on which the petitioner as shareholder was prevented from participating in the election in the category of shareholder director on the grounds stated in the minutes of the meeting of the Nomination Committee dated May 24, 2013.

60. Before adverting to the grounds on which the petitioner was found to be disqualified, it has to be remembered that the petitioner contested the election in 2010 after he retired from the service and after completing and serving as director on the board of the UCO Bank for a period of six years from November 14, 1991 to November 14, 2007 (two terms) and from February 18, 2002 to November 30, 2003. The petitioner retired from service on November 30, 2003 and on such retirement, he ceased to become a director of the UCO Bank as he continued in the board of the UCO Bank as a nominee of the said bank and not in the capacity as shareholder director. Accordingly, with the superannuation his directorship came to an end.

Thereafter, he participated and contested in the election for being elected as a director from amongst shareholders other than the Central Government in terms of section 9(3)(i) of the Acquisition Act. The Acquisition Act provides that without prejudice to the provisions of subsection (3A) and notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, no person shall be eligible to be elected as director under clause (i) of sub-section (3) unless he is a person having fit and proper status based upon track record, integrity and such other criteria as the Reserve Bank may notify from time to time in this regard. The Reserve Bank was also required to specify in the notification to be issued under sub-section (3AA), the authority who would determine fit and proper status, the manner of such determination, the procedure to be followed for such determination and such other matters as may be considered necessary or incidental thereto. The Reserve Bank of India in exercise of its power conferred upon it under the Acquisition Act issued a circular dated November 1, 2007, laying down the authority, manner and procedure and criteria for determining fit and proper person. In terms of the said circular, all nationalised banks required to constitute a committee consisting of members of minimum directors (all independent non-executive directors) from amongst the board of directors. The board of directors would be required to nominate one among them as chairman of the Nomination Committee. The Nomination Committee, thereafter, should undertake a process of due diligence to determine the fit and proper status of existing elected director/the person elected to be a director u/s 9(3)(i) of the said Act and for that purpose, the bank would be required to obtain necessary information and/or declaration in a prescribed form from the existing elected directors/persons who filed their nominees for election. The Nomination Committee should, thereafter, determine the fit and proper status of the existing elected directors/proposed candidates based on the broad criteria as mentioned hereunder:

(i) Educational qualification,

(ii) Experience and field of expertise,

(iii) Track record and integrity.

61. It was, however, clarified that the above list is not illustrative and not exhaustive. The Nomination Committee should ensure whether the "non-adherence to any of the above criteria would hamper the existing elected directors/proposed candidates as a director on the board of bank".

62. In the affidavit filed by the petitioner affirmed on September 9, 2013, the petitioner has disclosed the procedure adopted by the Punjab National Bank, Allahabad Bank, Bank of Baroda, Indian Overseas Bank, and Union Bank where from it appears that each of the aforesaid banks has stated that no maximum age limit to vote in an election of a shareholder director or to contest the election for the purpose of shareholder director in the bank has been specified by all or any of

them. The Reserve Bank of India in its communication dated August 22, 2013, informed that there is no specific guideline or instruction with regard to the maximum age limit for a shareholder to contest the election for the post of a shareholder director in a public sector bank. The wholesome reading of the circular dated November 1, 2007, along with the aforesaid communications of each bank including the Reserve Bank of India would clearly show that the three criteria referred to and alluded above, are considered to be mandatory non-adherence of each would immediately attract disqualification. In addition to it adverse notice of any authorities/or regulatory agency or insolvencies or default of any loan from any bank or financial institutions would make the candidate unfit and improper to be a director on the board of a bank.

63. The Acquisition Act broadly contemplates two types of directors, namely, nominated director and shareholder director. Section 9(3)(a) to (h) forms category of nominated and/or appointed directors by the Central Government mostly in consultation or on the basis of recommendation of the Reserve Bank of India. The shareholder directors come within the purview of section 9(3)(i) of the Acquisition Act. The Acquisition Act under 9(3A) specifically deals with the election of a shareholder director. Section 9(3A) starts with a "without prejudice" clause as well as a non obstante clause before proceeding to give uniqueness and supremacy of section 9(3A) of the said Act. The section in addition to the qualifications and eligibility prescribed in the Act specifically provides that the person eligible to be elected as a shareholder director should be a person having fit and proper status based upon the track record, integrity and such other criteria as the Reserve Bank of India may notify from time to time in this regard. It is to say that such person not only would have to fulfill the criteria u/s 9(3A) but would also be required to pass a rigorous test of the fit and proper status as indicated in section 9(3AA) of the Acquisition Act. The Act itself contemplates that one set of directors would be nominated and the other set of directors would be elected. The election of such directors are guided by section 9(3)(i) read with section 9(3A), 9(3AA), 9(3AB). The Act depending upon the capital structure of the concerned bank stipulates the number of directors who could be elected from and amongst the shareholders. The Act clearly specifies that such directors are to be elected by the shareholders other than the Central Government from and amongst such shareholders. Since the shareholder director forms altogether a different and separate category in so far as their appointment is concerned, such shareholder director has to pass a rigorous test of fit and proper status guideline laid down by the Reserve Bank of India. Unlike the appointment of other directors in which the role of the Reserve Bank of India is consultative and recommendatory. The Central Bank plays a more pivotal and responsible role in laying down the eligibility criteria of a candidate proposed to be elected from and amongst the shareholders of a bank. The bank has relied upon two circulars dated December 10, 2007 and June 1, 2011. These are revised guidelines/procedure for appointment of part time non-official directors on the

boards of nationalised banks. In the first circular 2007 amongst others, the age criteria stipulates that the age of the director on the date of the recommendation by appointing authority should not be less than 40 years and preferably below 60 years. The upper age limit may be relaxed in case of outstanding experts/eminent persons. The said guidelines further prescribes that no person would be re-nominated as a part time non-official director (hereinafter referred to as "NOD") if he or she served as director in the post under any category for two terms or six years whichever is longer. The NOD would also not be considered for nomination as director of a board of bank if such director had already been a NOD/shareholder director on the board of any other bank for six years whether continuously or intermittently.

64. Accordingly, a shareholder director would be disqualified for nomination as a part time non-official director on the board of a public sector bank if he had for six years whether continuously or intermittently served on the board of any other bank. The said clause, however, does not disentitle a shareholder director from seeking an election under the category of a shareholder director of the bank in which he is a shareholder.

65. Subsequently, a revised guideline was issued on October 13, 2011, in continuation of the earlier guideline referred to above. This time the upper age limit for undermining of a part time NOD has been fixed at 65 years with a clause that no further relaxation is desirable as opposed to not permissible. It also contemplates relaxation only with the approval of Appointment Committee of the Cabinet (ACC) and for reasons to be recorded by the Ministry. The other clauses relating to disqualifications also remained the same with a rider that the general rule of two terms for six years of NOD should apply to the directors appointed under CA category also.

66. The principal question is whether the candidature of the petitioner could be considered on the basis of the abovementioned circulars/guidelines which refer to nomination of part time non-official director.

67. The Nomination Committee was considering the eligibility of the petitioner to contest the election for shareholder director. In deciding the said application, the Nomination Committee had taken into consideration the Reserve Bank guidelines dated November 1, 2007 and the Government of India notifications dated December 10, 2007 and October 13, 2011, which was effective from June 1, 2011.

68. The Nomination Committee is constituted u/s 9(3AA) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and is required to adhere and follow the fit and proper criteria for elected directors on the board of nationalised banks as notified by the Reserve Bank of India on November 1, 2007. The said guideline issued by the Reserve Bank of India has laid down three broad criteria, namely, (1) Educational qualification, (2) Experience and field of expertise, (3) Track

record and integrity and observed that the above list is illustrative and not exhaustive. However, the said guideline clearly indicates that the Nomination Committee should see whether the non-adherence to any of the above criteria would hamper the existing elected director/proposed candidate from discharging the duties as a director on the board of the bank. The reading of the said broad criteria would show that the said Reserve Bank of India has considered the said three criteria as essential criteria non-adherence of which would disentitle or disqualify the existing elected director or proposed candidate from contesting the election.

69. The Act contemplates a democratic way of selection of a shareholder director and that is why in so far as election of a shareholder director is concerned, a different procedure is prescribed. While the shareholder director is elected, the other directors are nominated or appended by the Central Government. There is a distinction between an election and nomination. The criteria for election and nomination may not be the same. It is because of conceptual difference the said two expression inheres. In corporate governance, it is desirable that a board should be constituted democratically and the shareholders would have a say in the functioning of the board. The shareholder's contribution forms a part of the capital of the company and every shareholder has a right to see and expect that the company is properly managed. The Legislature, accordingly, while legislating the Acquisition Act recognises the importance of the representation of shareholder in the board of directors depending upon capital structure and, accordingly, has laid down a different procedure for selection of a shareholder director by the process of election from and amongst the shareholders on guidelines governed by section 9(3A), 9(3AA) and 9(3AB) of the Acquisition Act and not by nomination. The Reserve Bank of India has been accordingly entrusted to lay down the guideline and criterion for election of such shareholder director. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Financial Institution Laws (Amendment) Act, 2006 (45 of 2006) in the Statement of Objects and Reasons for amendment explained the reasons which, inter alia, highlights that the shareholding pattern of fifteen nationalised banks which had gone in for public issue varies from 51 per cent to 77 per cent and the Central Government holds the entire equity in four nationalised banks and has majority equity shareholding in fifteen nationalised banks. Due changes in the pattern of shareholding in the nationalised banks in 1994, some other provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and 1980 also requires amendments so as to bring the operation of these banks in tune with the changed scenario and modern business practices. The proposed amendment mentioned in sub-paragraph "(b) to (h)" of paragraph 5 of the amending Act, inter alia, includes a proposal to amend the clause relating to the participation of the shareholders and it was proposed in clause 5(a) (see [2006] 133 Comp Cas. (St.) 29, 51): "allow one to three shareholder directors on the board of the nationalised banks on the basis of issued capital of the bank

instead of one to six directors as per existing provisions so as to provide for a more equitable representation on the board of directors of the nationalised banks on the basis of percentage of ownership in such banks".

70. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and 1980 have also amended to enable the public to subscribe to the capital of nationalised banks up to 49 per cent, of the total capital. The Government, however, still continue to hold at least 51 per cent, of the equity of each of the nationalised banks. The aforesaid amendment proposes the following amendment in clause 5(e) "empower the shareholders of nationalised banks to discuss, adopt and approve the directors" report, the annual accounts and the balance-sheet of the bank for the period covered by such accounts at their annual general meeting".

71. The role of the Government in the matter of selection and/or election of the shareholder directors has been purposely excluded and such power was bestowed upon the Reserve Bank of India and rightly so in view of the fact that the Reserve Bank of India is the regulatory authority who is required to secure the monetary stability of the country to keep and watch on the function of the banks. The Reserve Bank of India is the specialised body competent to decide the matter and, accordingly, the Legislature has conferred the power upon the Reserve Bank of India to prescribe the eligibility criteria, namely, fit and proper status criteria for determining the eligibility of a shareholder director. The object of section 9 of the Acquisition Act is to give the boards of nationalised banks truly representative character so as to reflect the genuine interest of the various persons manning or dealing with the bank as an industry and a commercial enterprise [All India Bank Officers" Confederation and Others Vs. Union of India and Others](#), The Nomination Committee owes its existence to the Reserve Bank of India Circular. The Nomination Committee cannot go beyond the Reserve Bank of India Circular and decide the matter on the basis of circulars which are applicable not to shareholder directors. If the nomination was not in doubt, the Nomination Committee could have sought a clarification from the Reserve Bank of India. Neither the Reserve Bank of India nor any of the nationalised banks have introduced any age criteria in determining the eligibility of a shareholder director to contest the election in that category. The Nomination Committee did not indicate any reason as to why the petitioner has completely failed to appreciate that the criteria and/or guideline issued by the Government Ministry of Finance operates a different field altogether inasmuch as it applies to nomination and not to election. If the Nomination Committee specified that the broad criteria laid down by the Reserve Bank of India is fulfilled then the Nomination Committee could not have rejected the nomination of the petitioner on a specious plea of having crossed the age limit of 65 years. Moreover, the clause relating to six years continuously or intermittently is also not applicable in so far as the petitioner is concerned. The petitioner was holding the post of a director entirely on a different capacity at that point of time when he was an employee of the bank. The right to seek election in the category of shareholder director is an independent

right which is not in any way affected because of his holding the office of a director earlier on a totally different capacity, namely, as an employee of the bank. At this stage, he has an independent right to offer himself for election since his appointment to the board would be governed by the other clauses of section 9, namely, section 9(3)(a) to (h) and not (i). The right to contest the election in the capacity of the shareholder director emanates from section 9(3)(i) read with section 9(3A), 9(3AA) and 9(3AB) and same cannot be curtailed by reference to the circulars which does not govern the election of a shareholder director. The circulars relating to nomination of an NOD cannot be made applicable to a shareholder director since any application of such guidelines would cause a fetter upon the shareholder director to seek election and in the event such submission is accepted, it would militate against the very purpose for which clause 5(a) of the Amendment Act was incorporated in section 9(3)(i) of the Acquisition Act, 1970.

72. The said section contains both "without prejudice and non obstante clause". The non obstante clause is normally distinguished from the phrase "without prejudice". A provision enacted "without prejudice" to another provision has not the effect of affecting the operation of the other provision and any action taken under it must not be inconsistent with such other provision. The expression "without prejudice" have to be construed in the context in which it is used. A non obstante clause is appended to a section normally at the beginning, although in this case after without prejudice clause, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment (Principles of Statutory Interpretation, G.P. Singh, 13th edition).

73. Without prejudice clause in section 9(3AA) is restricted to sub-section (3A) and the non obstante clause appearing as conjunctive to without prejudice gives an overriding effect to the guidelines framed by the Reserve Bank of India in determining the fit and proper status for a candidate to become eligible for election in the category of a shareholder director. The Nomination Committee did not find the petitioner unsuitable either on account of section 9(3A) or under the fit and proper status guideline issued by the Reserve Bank of India. The Nomination Committee found the petitioner ineligible on grounds that are not at all applicable to the petitioner. Mr. Anindya Mitra, the learned senior counsel argued that the Nomination Committee has a discretion to adopt the Government Circulars in relation to NOD since the guidelines of the Reserve Bank of India permitted the Nomination Committee to play in the joints and unless such discretion is actuated by malicious or patently arbitrary and illegal, the court should not interfere with the discretion exercised by the Nomination Committee. Moreover in the guideline, the three criteria mentioned by the Reserve Bank of India are only illustrative and not

exhaustive which necessarily gives a discretion to the Nomination Committee to adopt such other criteria which the Nomination Committee would consider reasonable in deciding the eligibility criteria of such a candidate. The adoption of the said Government Circulars in the submission of learned senior counsel is reasonable and to bring about a uniformity in the matter of such election and/or selection as the case may be.

74. In *Mahomed Syedol Ariffin v. Yeoh Ooi Gark* reported in AIR 1916 PC 242 : [1916] 2 AC 575 (PC) the Privy Council held that illustrations appended to a section form part of the statute and although forming no part of the section, are of relevance and value in the construction of the text of the section and they should not be readily rejected as repugnant to the section.

75. A Judicial Committee held that in the construction of such an Act it was the duty of a court of law to accept, if that can be done, the illustrations given as being both of relevance and of value in the construction of the text. It would, they said, require a very special case to warrant their rejection on the ground of their assumed repugnancy with the sections themselves. It would be the very last resort of construction to make any such assumption. "The great usefulness of the illustrations, which have, though not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired" (Craies on Statute Law, 7th edition).

76. It would be worthwhile to refer to Bennion on Statutory Interpretation, 5th edition, which states:

"(1) Where an Act includes an example of its operation, this is to be treated as a detailed indication of how Parliament intended the enactment to operate in practice.

(2) If an example contradicts the clear meaning of the enactment the latter is accorded preference, it being assumed in the absence of indication to the contrary that the framer of the example was in error.

Sub-section (1) if Parliament thinks fit to include in an Act examples of how the Act is intended to operate, these are clearly of strong persuasive authority. They show how Parliament itself contemplated the Act would work. Judges have welcomed the assistance given by statutory examples. Lord Denning MR said:

". . . one of the best ways, I find, of understanding a statute is to take some specific instances which, by common consent, are intended to be covered by it. This is especially the case with a Finance Act. I cannot understand it by simply reading it through. But when an instance is given, it becomes plain. I can say at once: "Yes, that is the sort of thing Parliament intended to cover"."

Where statutory examples are given it is the duty of the court to accept their guidance. Unless this is unavoidable, they should not be rejected on the ground that

they are repugnant to the operative provisions of the Act.

Example 250.2 Direct examples were given by the Race Relations Act, 1968 (repealed) section 2(2). Section 2(1) of the Act made it unlawful to discriminate in the provision of "any goods, facilities or services". Section 2(2) began: "The following are examples of the facilities and services mentioned in sub-section (1) above . . ."

Section 20(2) of the Race Relations Act, 1976 is on similar lines to the Race Relations Act, 1968, section 2(2), and also closely follows the Sex Discrimination Act, 1975, section 29(2). Lord Fraser of Tullybelton said of the effect of the examples set out in the latter provision:

". . . the examples in section 29(2) are not exhaustive, but they are, in my opinion, useful pointers to aid in the construction of sub-section (1). Section 29 as a whole seems to me apply to the direct provision of facilities or services, and not to the mere grant of the permission to use facilities. That is in accordance with the words of sub-section (1), and is reinforced by some of the examples in sub-section (2)."

Where an example contradicts the clear meaning of an enactment the latter is accorded preference, it being assumed that the framer of the example was in error. This does not mean that the "clear" meaning will always be followed however. There are cases when the court will apply a strained construction, and an example may support the reasons for doing so. A repugnant example cannot in itself justify departure from the literal meaning of an operative provision however."

77. Where the statutory examples are given, it is a duty of the court to accept their guidance.

78. Mahomed Syedol Ariffin v. Yeoh Ooi Gark reported in ATR 1916 PC 242 : [1916] 2 AC 575 (PC) has been followed in a number of decisions including [The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah](#), However, in [Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumar Sharma and others](#), it was stated (page 145): ". . . illustrations to the section are parts of the section and help to elucidate the principle of the section". The illustrations cannot have the effect of modifying the language of the section and they cannot either curtail or expand the ambit of the section which alone forms the enactment AIR 1938 67 (Privy Council) and [Lalit Mohan Pandey Vs. Pooran Singh and Others](#),

79. Justice G.P. Singh in his Principles of Statutory Interpretation, 13th edition, expressed the view that the utility of illustration in interpreting the section cannot, however, detract the prime importance of the language of the section which is the enacting provision. Illustrations, therefore, cannot have the effect of controlling the real content of the section and must give way in case of repugnance with the text of the section.

80. Justice Bose in [Shambu Nath Mehra Vs. The State of Ajmer](#), while interpreting section 106 of the Indian Evidence Act, 1872 observed (page 406): "We recognise

that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit".

81. On the basis of the aforesaid it needs to be examined if the Nomination Committee has properly exercised its discretion in adopting two Government circulars as an additional qualification in deciding the nomination of the petitioner. In appreciating the same, reference can be made to the views expressed by the Reserve Bank of India as well as various other nationalised banks. The Reserve Bank of India has categorically stated that they have not issued any specific guidelines or instructions with regard to age restrictions. The other nationalised banks similarly situated and required to follow the same provision of the Acquisition Act and the RBI guidelines did not consider the age criteria as a relevant consideration in determining the candidature of a shareholder director. The aforesaid two Government circulars on which the Nomination Committee placed reliance also speak of relaxation. The Government circular dated October 13, 2011, which was given a retrospective effect from June 1, 2011, observed that no further relaxation beyond 65 years is desirable, however, the upper age limit may be relaxed only with the approval of ACC and the reasons to be recorded by the Ministry. Accordingly, in some cases the relaxation is permissible. However, those guidelines are applicable for nomination of part time NOD on the boards of public sector banks/financial institutions and does not speak about election of shareholder directors. In the matter of such nomination of part time NOD relaxation is permissible subject to the approval of ACC which benefit however, is not extended to the shareholder director the reason being as it seems to me that they form a separate and distinct category. The election of a shareholder director is governed by the RBI guidelines. Even if it is assumed that the two Government circulars could be taken into consideration in evaluating the candidature of the petitioner, the Nomination Committee would be required to arrive at a finding that in case of the petitioner, relaxation of the upper age limit is not desirable. The Reserve Bank guidelines does not refer to any of the grounds on which the Nomination Committee held the petitioner ineligible. If the Government Notifications dated December 10, 2007 and October 13, 2011, are made applicable, even then the petitioner could have been eligible provided the Nomination Committee arrives at a finding that the petitioner is not entitled to a relaxation of age. Both the Government Notifications contemplate relaxation. The reasons for rejecting the candidature of the petitioner by the Nomination Committee having regard to the entire gamut of controversy are more than what meets the eyes. The Nomination Committee did not find any adverse thing which would find the petitioner unsuitable for the post. If the Reserve Bank of India has not considered the age criteria or the continuation of a shareholder director for a consecutive terms for six years in a different capacity as a criteria and a relevant consideration in disqualifying a candidate it was not open to the Nomination Committee to disqualify the petitioner on such criterion in seeking election from the category of a shareholder director. The contention of Mr. Mitra that the said criteria

of the Reserve Bank of India is illustrative and not exhaustive and, accordingly, the Nomination Committee would have a wide discretion to reject the nomination of the petitioner by adopting eligibility criteria referred to the Government circulars in relation to nomination of NOD is difficult to accept. I am unable to accept such an interpretation. If Mr. Mitra's argument is accepted that the Nomination Committee has a discretion to adopt such other procedures seemingly with a view to bring uniformity, it has to be remembered that if a wide power is vested in the said authority, it has to be exercised with greater circumspection. Wide discretionary power conferred upon an authority sometimes results in an abuse of power and arbitrariness. Greater is the power, greater should be the caution. Such authority is required to exercise the power properly. In my view, any other criteria apart from the three main criteria laid down by the Reserve Bank of India would necessarily have to follow the three main criteria laid down in the notification issued by the Reserve Bank of India and cannot be wholly unconnected with or alien to the said criteria otherwise the RBI guidelines on "fit and proper" person status would be meaningless and render nugatory. Discretion implies absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate.

82. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice and not according to private opinion; according to law and not humour. It only gives certain latitude or liberty accorded by statute or rules, to a judge as distinguished from a ministerial or administrative officer, in adjudicating on matters brought before him [Aero Traders Pvt. Ltd. Vs. Ravinder Kumar Suri](#),

83. "A discretion", said Lord Wrenbury, "does not empower a man to do what he likes merely because he is minded to do so, he must in the exercise of his discretion do, not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason dictates".

84. It is to be not arbitrary, vague and fanciful/but legal and regular. Lord Halsbury LC in *Susannah Sharp v. Wakefield* [1891] AC 173 (HL) at page 179 referred to in [Siben Kumar Mondal Vs. Hindustan Petroleum Corporation Ltd. and another](#),

85. When any thing is left to any person, judge or magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law (Tomlin). In its ordinary meaning, the word signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty of power of acting without other control than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience,

uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore whoever hath power to act at discretion, is bound by the rule of reason and law (2 Inst. 56, 298; Tomlin).

86. The additional criterion adopted by the Nomination Committee would not promote the object of the Acquisition Act as well as the RBI guidelines. The adoption of the said additional criterion of the Nomination Committee in exercise of its discretionary power cannot be accepted as that would thwart or run counter to the object of the Acquisition Act and the guidelines issued by the Reserve Bank of India.

87. The right to stand for the election is a very valuable right. Such right has been recognised in the Acquisition Act, 1970. Importing a ground unconnected with the main object and intention of the statute and the guidelines issued by the Reserve Bank of India cannot be accepted. In this regard, this court is inclined to accept the submissions made by the petitioner that the Nomination Committee acted arbitrarily and without authority in importing such criteria that are not *ex facie* applicable to the petitioner with a view to disqualify the petitioner from contesting the election. The other candidates were not found suitable not merely on the age criteria but on other grounds. The court is not required to adjudicate the rights of the other candidates. The court is required to find out if the candidature of the petitioner has been arbitrarily rejected by the Nomination Committee. The petitioner found to be ineligible by the Nomination Committee on two grounds, namely, over age and that he was nominated two times as officer director on the board of the UCO Bank for a period over six years from November 14, 1991 to November 14, 1997 (two terms) and from February 18, 2002 to November 30, 2003. The Nomination Committee has overlooked the fact that the petitioner was in the board as a nominee of the bank and in the capacity as officer director and not in the capacity of shareholder director. He demitted his office on November 30, 2003, because of retirement. Moreover, if the Reserve Bank of India did not feel it necessary that the aforesaid two criteria would be a bar in determining the fit and proper status, it was not open for the Nomination Committee to apply such guidelines. The Nomination Committee owes its origin to the notification issued by the Reserve Bank of India in exercise of its power u/s 9(3AB) and having regard to the fact that the Reserve Bank of India did not feel it necessary to issue any specific guidelines or instructions on the age criteria or on the other criteria of two consecution terms, it was not open to the Nomination Committee to disqualify the petitioner on such grounds or any of them. Moreover, it is not in dispute that in 2010 when the petitioner contested the election in the category of shareholder director, the Nomination Committee did not find the petitioner ineligible on the basis of the Government guidelines dated December 10, 2007, in which it was observed that the age of the director on the date of recommendation by appointments, board should be preferably below 60 years with a rider that the upper age limit might be relaxed in case of outstanding experts/ eminent persons or that he was earlier nominated two times as officer director for a period of six years

(two terms) and subsequently from February 18, 2002 to November 30, 2003. The said two criterion at that time were not found to be an important or relevant factor in determining the candidature. The Government guidelines, if scrutinised, would show that such guidelines are to operate on a different field altogether and such circulars cannot have any application to the shareholder director.

88. Now comes the issue of granting a mandatory order at the interlocutory stage. Mr. Anindya Kr. Mitra, learned senior counsel has submitted that at the interlocutory stage, the court should not pass a mandatory order. It was submitted that the plaintiff has failed to make out a strong case for trial. The balance of convenience is not in favour of the plaintiff and no irreparable or serious injury has been shown by the plaintiff. The mandatory injunctions are generally granted in case of wrongful dispossession from immovable property and for restoration of possession thereof. In order to get a mandatory order, the plaintiff would be required to demonstrate that the wrongful conduct of the respondent authorities are manifestly unjust and the materials-on-record on the face of it would establish that nothing remains for the parties to go to trial on the said issue.

89. Justice Megarry in *Woodford v. Smith* [1970] 1 All ER 1091 (Ch D) held that the wrongful deprivation of a right to vote even at a meeting of a mere private association, is no trivial matter. If the plaintiff is able to establish a manifest injustice being caused to the plaintiff and for which no further evidence is called for, in my view, the court is not precluded from passing a mandatory order which would have the practical effect of granting the sole relief claimed. The cases are not restricted only to the preservation of property. In *Woodford v. Smith* [1970] 1 All ER 1091 (Ch D) Justice Megarry has gone to the extent saying that there is nothing to prevent the court in a proper case from granting on motion substantially all the reliefs claimed in the action. The court in such a situation would be required to look at the case as a whole and if the court is satisfied with the grounds made out in the petition, the court should not refuse to grant injunction.

90. In *Acrow (Automation) Ltd. v. Rex Chainbelt Inc* [1971] 3 All ER 1175 (CA) it was reiterated that at the interlocutory stage, it may call for virtually deciding the action, but that often happens considering the nature of the controversy and the action brought before the court. In that case the Court of Appeal on a finding arrived at that the defendants have unlawfully interfered with the plaintiffs' business passed an injunction in the mandatory form directing the defendants to use all reasonable endeavors to supply the plaintiffs with the chain needed for the manufacture of "to-low" equipment disregarding the instruction received from SI Inc. It was found that there was no just cause or excuse for the defendants not to supply the chain to the plaintiff and the SI Inc. acted unlawfully in interfering with the supply to be affected by the defendant to the plaintiff in breach of the implied term of the licence agreement. The defendants were found to have obeyed SI Inc's instructions in breach of its obligations to the plaintiff.

91. In *Heywood v. B.D.C. Properties Ltd.* [1963] 2 All ER 1063 (CA) the Court of Appeal dealt with the objection that to vacate the land charge would be equivalent to giving judgment on an interlocutory application in the action in favour of exactly the relief which the plaintiffs would obtain at the eventual hearing of the action in the ordinary way by reiterating the principle that although the general rule is that the court will not grant, on motion, that relief which ought to be granted at the hearing, yet it will do so in some cases. The ratio of the decision seems to be that the order would largely depend on the circumstances and the convenience of the matter. It was stated at page 1067 of the report that: "The matter of substance to which I referred to is whether it is proper on an interlocutory application--this would apply equally whether the application were by way of motion or by way of summons--to make an order which has the effect of granting the plaintiffs substantially the whole of the relief claimed in the action. That is the real complaint of substance which has been put before us. My lord has already referred to the two cases cited to us *Bailey v. Ford* [1843] 13 Sim. 495 and the recent case before this court of *Bailey (Malta) Ltd. v. Bailey* ("The Times", May 29, 1963). Those cases, I think, do show that it is only in unusual circumstances that the court ought to take the step of granting substantially the whole relief claimed in the action on an interlocutory application. But they equally show that that is a procedure which, in a proper case, is available. In my judgment, having regard to the admitted fact that the alleged contract registered was no contract at all, this is one of those cases in which it is proper and appropriate to grant by way of interlocutory application the relief which the judge has granted. In those circumstances I agree that the judge came to the right conclusion, and that the appeal should be dismissed".

92. The aforesaid principles have been followed by our courts also and if any reference is called for one can refer to the following decisions:

(1) AIR 1985, Cal 248 (*Indian Cable Co. Ltd. v. Smt. Sumitra Chakraborty*).

(2) [Premier Industries \(India\) Ltd. Vs. Alliance Credit and Investments](#),

93. In [Premier Industries \(India\) Ltd. Vs. Alliance Credit and Investments](#), : [Premier Industries \(India\) Ltd. Vs. Alliance Credit and Investments](#), it was held that it has been the consistent view that when there is no dispute as to the right of the plaintiff to the property there is no bar to passing an interim order even if it amounts to decreeing the suit.

94. In fact, a large number of English decisions were referred to and considered in [Dorab Cawasji Warden Vs. Coomi Sorab Warden and others](#), in considering the power of the court to grant such interlocutory mandatory injunction. It was held in [Dorab Cawasji Warden Vs. Coomi Sorab Warden and others](#), that in certain special circumstances, the court can pass such mandatory order the interlocutory stage.

95. Mr. Mitra has relied upon paragraphs 14 and 15 of the said decision which states as follows (page 126 of [1990] 2 SCC):

"14. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

15. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

96. The principle laid down in the aforesaid paragraphs is not restricted to a case of preservation of a right in respect of wrongful dispossession from immovable property. It is equally settled that if the unlawful act has been committed and an order restraining its commission is, therefore, meaningless, justice can sometimes be done by issuing a mandatory injunction ordering the act to be undone (Hanbury and Martin: Modern Equity). As mentioned earlier, the right to contest election is a valuable right and such right should not be ordinarily interfered with and the authorities concerned cannot prevent an eligible contestant from contesting the said election on unreasonable grounds. The importance of representation of shareholder director in the board is the requirement of the statute which the said bank is obliged to ensure and not to deny such right on flimsy ground. The denial of right to the petitioner on the aforesaid two grounds invariably cause a serious prejudice to his right to stand for election and seek election under the category of shareholder director. The respondent authorities have failed to explain as to why a different approach was adopted in 2013, although the said aforesaid grounds were available to them in 2010 when the plaintiff contested and lost the election. Initially, the UCO Bank informed the petitioner by a communication dated July 12, 2011, that the bank had received various representations containing allegations/claims and

counter-claims/allegations against the petitioner in view of the nature of such allegations the Nomination Committee of the board directed the bank to make intensive examination of alleged facts and also to make reference to the Government of India for clarification with regard to the fit and proper status of the candidates. It was on that basis the Agenda Item No. 3 relating to the election of director mentioned in the notice dated June 3, 2011, was withdrawn giving rise to the filing of the earlier suit. Just prior to the said communication, the chairman and managing director of the UCO Bank addressed a letter to the UCO Bank to make applications seeking clarification with regard to the candidature of the petitioner which reads as follows:

"Sri S. Roy Choudhury, another contesting candidate is a retired employee of the bank and drawing pension. We have received two legal opinions having conflicting views about whether a pensioner, of the bank, holds office of profit. Further, in terms of Gazette of India Extraordinary, dated December 29, 2000, issued by the Ministry of Finance, Government of India, do not permit an employee of the bank to contest the election as shareholder director. In view of the fact that position of employee is considered as holding office of profit. As mentioned, Mr. Suman Roy Choudhury is a retired employee of the bank and a pensioner. Taking this fact into consideration whether it would be appropriate to consider Mr. Roy Choudhury to be holding an "office of profit".

Moreover, Mr. Suman Roy Choudhury, is an office bearer of an officer association representing the interest of officers. As there is a separate provision officer employees to be represented on the board by statute, can Mr. Suman Roy Choudhury representing an association of employees represent the category of shareholders on the board."

97. The petitioner was not, however, found an unfit person under the RBI guidelines.

98. In any event, the enquiry of the bank as to the clarification is restricted to the issues mentioned in the said letter which is in no way connected with the grounds on which the Nomination Committee found the petitioner ineligible. The order of the appellate court in connection with the earlier suit records that the bank withdrew the Agenda and sought clarification from the Reserve Bank of India. It further appears that learned counsel representing the bank on instructions submitted the Reserve of India already clarified to the extent that two of the contestants were not holding any office of profit, however, the question of integrity was not gone into. Accordingly, as on April 8, 2013, the situation as it stood was that the Nomination Committee was required to consider the integrity of the candidates. It was further stated before the hon"ble Division Bench that the Agenda was kept in abeyance awaiting decisions of the Reserve Bank of India. The bank did not disclose the decision of the Reserve Bank of India. On the contrary, the several annexures to supplementary affidavit would show that the RBI did not issue any instruction which

would disqualify the petitioner from contesting the election on the grounds on which the Nomination Committee found the petitioner ineligible. The entire set of facts, if taken together, would show that the petitioner has suffered demonstrable prejudice and arbitrariness at the hands of the authorities concerned. Wider the power there is always an apprehension of misuse of such power and in view thereof the court is not precluded from finding out if such discretion has been properly exercised. Considering the object of the Acquisition Act and the Reserve Bank guidelines, in my view, the Nomination Committee does not have any unfettered and unlimited discretion. If a wide power is conferred upon administrative authority, it must be exercised reasonably.

99. Apart from the three well-known tests of illegality, arbitrariness and procedural impropriety, the other facet of challenge to such action is arbitrariness. The petitioner should have been allowed to contest the election in 2011 itself. The respondent authorities are citing different reasons at different times to present the petitioner from contesting the election. The decision of the Nomination Committee is based on extraneous consideration and suffers from perversity.

100. Mr. Mitra would remind this court that a mandatory injunction is, however, seldom granted before the hearing, though when the case is clear and free from doubt it may be had upon interlocutory application. Prompt action is essential if a mandatory injunction is the desired remedy. I think it is one of those cases which is clear and one which the court thinks ought to be decided at once since there is no necessity to prolong the said proceeding. The tenure of the shareholder director would expire in the middle of 2014. The plaintiff was prevented from contesting the said election in 2011 would be again deprived to seek the election if a prolonged trial takes place. Since the issues involved can be conveniently decided at this interlocutory stage without having the luxury of a ritualistic trial which in the instant case is wholly unnecessary, in my view, the plaintiff who had already suffered in the hands of the defendant authorities should not be made to suffer any further. The law cannot be a lame duck and would not allow its power and jurisdiction to be fettered on a perception that the court should not grant a mandatory injunction. The court can issue temporary injunctions in a mandatory form. All that the court is required to ensure that the plaintiff is able to make out a case for mandatory injunction. It all depends upon the facts of each case. If the court is satisfied on the basis of the materials on record that the issue involved in the interlocutory application can be finally and conclusively decided without going through the rigmarole of a trial and the plaintiff has been able to satisfy the court that the case is clear and free from doubt and does not require any further trial on the said issue. The court is not precluded from passing a temporary injunction in a mandatory form. In the instant case, as discussed above, the legality and validity of the order passed by the Nomination Committee can be decided on the basis of the available record and it ex facie shows that the Nomination Committee has completely misdirected its mind and has arrived at a conclusion which is perverse. In deciding

the said issue, no witness action is required.

101. In considering the totality of the situation and having arrived at a definite finding that the impugned decision is illegal, there shall be an order in terms of prayers (h) and (i) of the petition. In my view no oral evidence is called for to decide the aforesaid issue. However, in so far as the prayer (e) is concerned on the basis of the deeming provision that if there is only one valid nomination for the vacancy to be filled in by the election, the candidate so nominated shall be deemed to be elected forthwith, the Nomination Committee shall scrutinise if after the impugned decision was passed during the interregnum period, the petitioner has incurred any disqualification under the fit and proper status in terms of the Reserve Bank guideline and in the event it is found that he has not incurred any disqualification during such period the petitioner shall be deemed to be elected under the category of shareholder director. The Nomination Committee shall scrutinise the same within a period of two weeks from the date and shall communicate its decision to the petitioner within a week thereafter. G.A. No. 1862 is accordingly allowed. However, there shall be no order as to costs.

102. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

Later:

Mr. Deb Dutta Sen, learned counsel appearing on behalf of the UCO Bank prays for stay of operation of this judgment. The same is considered and rejected.