

**Chandrakant Jagannath Ghodke, Chairman, Maharashtra State Co-operative Agriculture Rural Multipurpose Development Bank Ltd. Vs Commissioner for Co-operation and Registrar, Co-operative Societies, State of Maharashtra, Maharashtra State Cooperative Agriculture Rural Multipurpose Development Bank Ltd. and National Bank for Agriculture and Rural Development <BR> The State Cooperative Agricultural and Rural Development Bank Employees Union Vs The State of Maharashtra, The Maharashtra State Cooperative Agricultural Rural Multipurpose Development Bank Ltd., The Commissioner for Cooperation and Registrar, Cooperative Societies and National Agricultural and Rural Development Bank <BR> Madhukar Digambar Akotkar Vs The Maharashtra State Co-op. Agriculture Rural and Multipurpose Development Bank Ltd., The Commissioner, Co-operation Registrar, Co-operative Societies and The Secretary to the Government of Maharashtra in the Co-operation and Textiles Department**

**Court:** Bombay High Court

**Date of Decision:** April 24, 2003

**Acts Referred:** Constitution of India, 1950 " Article 226

**Citation:** (2003) 3 ALLMR 39 : (2003) 6 BomCR 238

**Hon'ble Judges:** C.K. Thakker, C.J; D.Y. Chandrachud, J

**Bench:** Division Bench

**Advocate:** Arun Kumar Barthakur, in Writ Petition No. 7466 of 2002, G.S. Godbole, in Writ Petition No. 7392 of 2002 and K.K. Malphatak, in Public Interest Litigation No. 93 of 2002, for the Appellant; R.M. Patne, Assistant Government Pleader for respondent Nos. 1 and 2 and Arun Kumar Barthakur, in Writ Petition No. 7466 of 2002, R.M. Patne, Assistant Government Pleader for respondent Nos. 1 and 3, Arun Kumar Barthakur and Kartik Date, holding for S.S. Pandit, in Writ Petition No. 7392 of 2002 and Arun Kumar Barthakur and R.M. Patne, Assistant Government Pleader for respondent Nos. 2 and 3 in Public Interest Litigation No. 93 of 2002, for the Respondent

## **Judgement**

C.K. Thakker, C.J.

Rule, Mr. R.M. Patne, learned Assistant Government Pleader, appears and waives service of Rule on behalf of State

of Maharashtra and Commissioner for Co-operation and Registrar, Co-operative Societies, Maharashtra State, Pune, Mr. Kartik Date, holding

for Mr. S.S. Pandit, appears and waives service of Rule on behalf of National Bank for Agriculture and Rural Development.

2. In the facts and circumstances, all the matters were taken up for final hearing. Heard the learned counsel for the parties.

3. In all these petitions, common questions of fact and law have been involved. It is, therefore, appropriate to deal with all the petitions

simultaneously and decide them by a common judgment.

4. To appreciate the controversy raised in the present group of petitions, relevant facts in the first matter i.e. Writ Petition No. 7466 of 2002 may

briefly be stated.

5. The said petition is filed by the petitioner, who claims to be the Chairman of Maharashtra State Co-operative Agriculture Rural Multipurpose

Development Bank Limited ("Bank" for short), respondent No. 3 herein. According to the petitioner, respondent No. 3 was established on

December 7, 1935 under the Bombay Co-operative Societies Act, 1925, then in force. The main object of the Bank was to provide all types of

long-term investment credit for agricultural development and allied activities in the State. The structure of the Bank was federal and all District Land

Development Banks were functioning as separate entities having their bye-laws and Board of Directors. In 1960, the Maharashtra Co-operative

Societies Act, 1960 (hereinafter referred to as "the Act"), came to be enacted and all District Land Development Banks were amalgamated with

the State Co-operative Land Development Bank and thus the State Co-operative Land Development Bank acquired unitary structure.

6. According to the petitioner, initially he was elected as the Chairman on April 30, 2001, for a period of one year. Thereafter, by virtue of

reorganisation of the Bank with effect from October 1, 2001, in pursuance of notification issued by the State Government, the petitioner was

nominated as the Chairman of respondent No. 3 Bank for a period of two years. The petitioner was again elected as Chairman at an election held

on May 23, 2002 for a period of one year and at present he is holding the said office.

7. The Petitioner has stated that Commissioner for Co-operation, and Registrar, Co-operative Societies, State of Maharashtra, respondent No. 1

herein, is an Officer appointed u/s 3 of the Act. By virtue of Section 113 of the Act, he is also a trustee, securing the fulfilment of the obligations of

respondent No. 3 Bank to the holders of debentures issued by the Bank. Very wide and extensive powers have been vested in the first respondent

for recovery of loans by the Bank by sale of mortgaged or encumbered properties. He is also an ex-officio member of the Board of Directors of

respondent NO. 3 Bank u/s 112B of the Act read with Bye-laws 34 (6) of the Bank. The respondent No. 1 has thus an important role to play and

obligations to perform by supervising, influencing and regulating effectively the business of respondent No. 3 Bank. As an ex-officio member of the

Board of Directors of respondent No. 3 Bank, he actively participates in the business of the Bank as a denominating member of the Board.

Respondent No. 3 Bank is the Apex Agricultural Multipurpose Development Bank under Chapter XI of the Act constituted u/s 112 of the Next

Act.

8. According to the petitioner, respondent No. 4, National Bank for Agriculture and Rural Development ("NABARD" for short) is the apex

organisation which deals with all matters relating to policy, planning and operational aspects in the field of credit for the promotion of agriculture,

small scale industries, cottage and village industries, handicrafts and other rural crafts as also other allied economic activities in rural areas.

NABARD extends refinance to the State Co-operative Agriculture and Rural Development Banks by refinancing loans on such terms and

conditions as determined by it.

9. The grievance of the petitioner in the present petition is against an order dated 12th November, 2002, passed by the first respondent in

purported exercise of power u/s 102 of the Act. The said order is annexed at Exhibit-K along with "Office Translation". The preamble of the order

states that the Bank was established and working under the provisions of the Act. The main object of the Bank was to provide long-term loans to

the farmers for their agriculture and rural development. It was, however, observed in the order that since last four-five years, the Bank has not

disbursed loans for agriculture and it was not capable of fulfilling the objects of its establishment; that in the Audit Report, the Bank had been given

Grade "D" for the year 2000-01 and Grades "C", "D" and "D" respectively for the previous three years; that on 31st March, 2000 the Bank had

incurred a loss of about Rs. 509 crores; that under the Special Development Schemes, the principal and interest repayable by the Bank was of Rs.

50.08 crores for the year ending on 31st March, 2001 but the Bank had not repaid it to the State; that the Bank has not refunded the amount of

subsidy of Rs. 34.04 lakhs of misutilised loans alongwith redeposited grant of Rs. 30 lakhs; that from 1998-99 to 2000-2001, there was increase

in demand and decrease in recovery thereby increase in overdues; that though the target for recovery by the Bank on 31st March, 2001 was Rs.

640 crores, the Bank could recover only Rs. 212 crores; that against a demand of more than 12 crores from reputed, rich and influential members,

there was a meagre recovery of Rs. 4 crores; that the Joint Registrar (Audit) in the Audit Report for the year 2000-01 stated that no effective

steps had been taken even though serious defects were highlighted and brought to the notice of the Bank that as per tri-partite agreement, the Bank

had to pay to NABARD Rs. 70 crores on or before 31st March, 2002 but it was impossible for the Bank to pay the said amount, thus there

would be breach of the tripartite agreement: that the installment of the loan payable by the Bank to NABARD had been rescheduled but the Bank

could not make payment even as per re-schedulement.

10. In the light of the above allegations and circumstances, the first respondent was satisfied that there was no chance of improvement in the

working of the Bank and the Bank was not in a position to fulfil the aims for which it had been established and incorporated. He, therefore, in the

exercise of power under Sub-section (1) of Section 102 of the Act, passed an order of interim winding up of the business of the Bank, and by

appointing a liquidator u/s 103.

11. In the said order, the first respondent observed:

“R;kvFkkZ] cÃ-Â-Â½dsps ,danj vkfFkZd ifjLFkfr igkrk Inj cÃ-Â-Â½dsps dkedtkr lq/kkj.k gks.;kps dks.krksgks "kD;rk ukgh cSad frP;k LFkkusP;k

mnns"kkph iwrZrk d: "kdr ulY;keqys Inj cÃ-Â-Â½dsps dkedt xqaMky.ks gs cÃ-Â-Â½dsps Bsohnkj] IHkkl n o /kudks ;kaP;k fgrkP;k n ""Vksus Ã-Â-Â½eizklr

>kysys vkgs v"kh ek>ks [kk=h >kY;kus Hkh egkjk""V jkT; lgdkjh d`f""k xzkeh.k cgqmÃ-Â-Â½sf"k; fodkl cSad e-] eqacbZ gks cSad volk;ukr

dk<.;kph vko";drk vkgs ;k fu""d""kkZizr vkY;kus Hkh [kkyh izek.ks vkns"k ikfjr djhr vkgsA

&% e/;arjks; vkns"k %&

egkjk""VÃ-Â-Â½ lgdkjh laLFkk vf/kfu;e 1960 ps dey 102 o 103 vUo;s eyk izklr >kysY;k vf/kdkjkuqlkj eh jRukdj xk;dokM] Hkk-iz-ls-] lgdkj vk;qDr

o fuca/kd] lgdkjh laLFkk] egkjk""VÃ-Â-Â½ jkT;] iq.ks egkjk""VÃ-Â-Â½ jkT; lgdkjh d`f""k xzkeh.k cgqm}sf"k; fodkl cSad e-] eqacbZ ;k cÃ-Â-Â½dsps dkjHkkj

egkjk""VÃ-Â-Â½ lgdkjh laLFkk vf/kfu;e 1960 ps dye 102 e/khy rjrnwHlr vuqy xqaMky.kspk e/;arjks; vkns"k nsr vrwu dye 103 vUo;s Jherh tkW;l

"kadju] Hkk- iz- ls-] dk;Zdkjh lapkyd] egkjk""VÃ-Â-Â½ jkT; lgdkjh d`f""k xzkeh.k cgqmÃ-Â-Â½sf"k; fodkl cSad e-] eqacbZ ;kaph vko";d Eg.kwu fu;qDrh

djksr vkgs-

eks iq

~~dk;kZy;kr fnukad 2-12-2002 jksth fdaok rRiwonZ djok -R;k i""BFkZ vki.kl dgks lkaxko;kps vY;kl vki.k fnukad 13-12-2002 jksth ngikjh 3-00~~

~~oktrk mifLFkfr jgkos -vki.k mifLFkfr jgkos -vki.kZ mifLFkfr u fgY;kr vki.kkar dk ghgh lkaxko;kos uksgh vrs x`fgr /kLu vFkok vkiky [kqykll~~

~~lek/ksudkj d u okVY;kl volk;ukpk e/;arjks; vkns"k dk;e dj.;kr ;sbZy \*\*~~

The English translation supplied by the learned counsel for the petitioner reads thus:

Hence, considering the all round financial condition of the Bank, there is no chance of improvement in the working of the Bank and the Bank being

not in a position to fulfill the aims for which it had been incorporated, I, having been convinced that it is in the interest of Bank's depositors,

members and creditors to wind up the business of the Bank and have reached the conclusion that Maharashtra State Agriculture Rural

Multipurpose Development Bank, Mumbai, deserves to be wound up u/s 102 of the Maharashtra Co-operative Societies Act, 1960; and hence, I

pass the following order:

**INTERIM ORDER:**

I, RATNAKAR GAIKWAD, I.A.S., Commissioner for Co-operation and Registrar, Co-operative Societies, Maharashtra State, Pune exercising

powers conferred on me under Sections 102 and 103 of the Maharashtra Co-operative Societies Act, 1960, do hereby pass interim orders of

winding up of the business of Maharashtra State Co-operative Agriculture Rural Multipurpose Development Bank Ltd., Mumbai and do further

appoint Smt. Joyce Shankaran, I.A.S., Managing Director, Maharashtra State Co-operative Agriculture Rural Multipurpose Development Bank

Ltd. Mumbai as Liquidator under the provision of Section 103.

I, further order that you should furnish oral or written clarification personally or through an Advocate to this office as to why the above orders

should not be confirmed on or before 02-12-2002. In support thereof, if you have to make any submissions, you may remain present in this office

on 13-12-2002 at 3.00 p.m. in default it will be assumed that you have no clarification to be given or in case the clarification given by you is not

found to be satisfactory the interim orders would be confirmed.

12. Writ Petition No. 7392 of 2002 is filed by the Union of employees of the Bank. In the said petition also, legality and validity of an interim order

of winding up challenged by the Chairman of the Bank in Writ Petition No. 7466 of 2002 is questioned.

13. Public Interest Litigation No. 93 of 2002 is filed by an employee of Respondent Bank, who is working as Junior Officer. He claims to be a

Journalist, connected with several projects of social and public importance and contends before this Court that the order of winding up deserves

interference by this Court.

14. It appears that initially Public Interest Litigation No. 93 of 2002 came up for admission hearing on December 11, 2002 and the Division

Bench, to which one of us was a party (C.K. Thakkar, C.J.) passed the following order:

Without expressing final opinion with regard to the maintainability of the petition by the petitioner as pro bono publico at this stage, notice to the

respondents, returnable in the third week of January, 2003. Ad interim relief, is, however, refused.

So far as Writ Petition Nos. 7466 of 2002 and 7392 of 2002 are concerned, they came up for admission hearing before the learned vacation

Judge on 26th December, 2002 and the following order was passed:

The matter be placed before regular bench for admission on 7-1-2003. Till then, the final order which respondent No. 3 may pass shall not be

given effect to.

Authenticated copy is allowed.

The said order was thereafter continued from time to time.

15. We have issued Rule in all matters and have heard the learned counsel for the parties.

16. The learned counsel for the petitioners in all the three petitions raised several contentions. It was urged that the first respondent has no

jurisdiction to pass an order u/s 102 of the Act and the order is illegal, unlawful and without authority of law; that the conditions laid down in

Section 102 have not been complied with and in absence of grounds mentioned in the said section, no action could have been taken by the

Registrar of winding up of the Bank or appointing a liquidator; that there is non application of mind on his part to the relevant circumstances and on

that ground also the impugned action deserves to be set aside. No show cause notice was issued, no explanation was called for and no opportunity

of hearing was afforded. The action is, therefore, violative of the principles of natural justice and fair play. The Registrar is an ex-officio member of

the Board of Directors of the respondent Bank. He, therefore, cannot be a Judge in his own cause and the action of the Registrar as Prosecutor as

well as a Judge violates the fundamental principle of justice. The action of winding up of a Bank is very serious and drastic in nature. Before taking

such action, the first respondent ought to have considered other alternatives and less drastic steps under the Act. Without resorting to other modes,

an order of winding up of the Bank could not have been passed. Though the order is interim in nature, since it entails serious civil consequences,

the Registrar ought not to have made it casually or lightly. The impugned action would make the provisions of the Act nugatory and otiose

inasmuch as the Act mandates that there shall be an Agricultural and Rural Development Bank. If the action of respondent No. 1 is upheld, there

would not be such a Bank, though law enjoins existence of such a Bank. There is no default on the part of the respondent Bank in performing its

functions and discharging statutory duties. It is not true that the Bank is defunct or non-working. Unfortunately, however, the order was passed

without extending an opportunity to the Bank to have its say in the matter. Had such opportunity been afforded to the respondent Bank, it could

have satisfied and convinced the Registrar that there was no fault on the part of the Bank. The action also adversely affects several employees

working in the Bank throughout the State and future of about 4000 employees would be jeopardised. On all these grounds, it was submitted that

the order of the first respondent Registrar deserves to be set aside.

17. The learned Assistant Government Pleader appearing for respondent No. 1 (in Writ Petition No. 7466 of 2002), on the other hand, supported

the order passed by the first respondent Registrar. He submitted that the Registrar has power, authority and jurisdiction to make an order under

Sub-section (1) of Section 102 of the Act. After application of mind and having considered the facts and circumstances in their entirety, in bona

fide exercise of power and by recording valid, germane and convincing reasons, the order has been passed by the first respondent, which cannot

be termed arbitrary, illegal or unreasonable. Moreover, the order is merely interim in nature. The next stage is still to come. Sub-section (2) of

Section 102 requires the Registrar to call upon the Society (Bank) to submit its explanation and to afford an opportunity of hearing. Before that

stage, the petitioners have approached this Court by filing the present petitions. The petitions are, therefore, pre-mature and deserve to be

dismissed only on that ground by allowing the Bank to put forward its defence, explanation or clarification and by directing the Respondent-

Registrar to pass an order in accordance with law. It is only thereafter that the Bank may take appropriate proceedings in accordance with law if

interim order is confirmed by the Registrar. At this stage, no case has been made out by the petitioners against the order passed by the Registrar

under Sub-section (1) of Section 102 of the Act. The learned Assistant Government Pleader submitted that Sub-section (1) of Section 102 of the

Act requires formation of "opinion" by the Registrar that the Society (Bank) deserves to be wound up. It is a tentative provisional or prima facie

opinion which can be formed by him on the basis of materials placed or are available. It is only at the stage of final order under Sub-section (2) of

Section 102 of the Act that the principles of natural justice have to be observed. The order impugned in the present petitions expressly recites that

if the Bank wishes to furnish oral or written submissions personally or through an advocate, as to why interim order should not be confirmed, it can

do so on or before a date specified in the order. Instead of putting forward such explanation, the petitioners have rushed to this Court.

18. Regarding Writ Petition No. 7392 of 2002, the learned Assistant Government Pleader contended that the petition is not maintainable at the

instance of a Union. He submitted that the action is taken against the Bank. Hence, no petition could be filed by the Union against the impugned

order.

19. As to Public Interest Litigation No. 93 of 2002, it was submitted that the petitioner has not approached pro bono publico, and he has personal

interest in the matter. The petition, hence, deserves to be dismissed as it is not in the nature of PIL.

20. Having heard the learned counsel for the parties, in our opinion, at this stage all the petitions deserve to be disposed off by issuing appropriate

directions. The learned counsel for the parties drew our attention to the relevant provisions of the Act. Clause (10) of Section 2 defines "co-

operative bank" which includes an Agriculture and Rural Development Bank established under Chapter XI. Chapter XI of the Act deals with

Agriculture and Rural Development Banks. Section 112 of the Act declares that there shall be State Agriculture and Rural Development Bank for

the State of Maharashtra. Section 112-B provides for constitution of Committees and Board of Directors of State Agriculture and Rural

Development Bank. The Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State (or his representative) is ex

officio member of the Board of Directors of the Bank. He is a Trustee and exercises certain powers as such u/s 113 of the Act. Section 144-IA

provides for reorganisation, amalgamation or division of Agriculture and Rural Development Banks in public interest.

21. Chapter X deals with liquidation. Section 102 is relevant to the controversy raised in the present group of petitions and may be quoted in

extenso.

102. (1) If the Registrar:

(a) After an inquiry has been held u/s 83 or an inspection has been made u/s 84 or on the report of the auditor auditing the accounts of the society,

or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting

called for the purpose, or

(c) of his own motion, in the case of a society which-

(i) has not commenced working, or

(ii) has ceased working, or

(iii) possesses shares or members deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the bye-laws,

is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.

(2) A copy of such order made under Sub-section (1) shall communicated, in the prescribed manner, to the society calling upon it to submit its



explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society of

being heard, may issue a final order, vacating or confirming the interim order.

Section 103, 105 and 108 deal with consequences of an order of liquidation passed u/s 102. They provide for appointment of Liquidator and

powers to be exercised by him. Section 104 provides for filing of Appeal against an order of winding up in certain cases. The effect of order of

winding up has been dealt with in Section 106. Section 107 bars suits in winding up and dissolution matters. Sections 109 and 110 deal with

termination of liquidation proceedings and disposal of surplus assets.

22. In the instant case, we do not wish to enter into larger questions as, in our opinion, an action taken by the first respondent Registrar under

Sub-section (1) of Section 102 is legal, valid and in accordance with law. Before making the impugned order on November 12, 2002, the first

respondent took into account several circumstances and formed an "opinion" that the third respondent Bank ought to be wound up. The order is

interim order. A copy of the said order has been sent to the third respondent Bank as required by Sub-section (2) of Section 102 of the Act. The

grounds on which interim order was passed were also communicated to the Bank and the Bank was called upon to submit its explanation to the

first respondent by giving an opportunity to the Bank of being heard as to why the said interim order should not be made final order by confirming

it. It is now open to the third respondent Bank to put forward all defences which have been set out in an affidavit in reply in Writ Petition No.

7466 of 2002. In our considered opinion, such questions have to be considered, dealt with and decided initially by the first respondent in exercise

of statutory powers under Sub-section (2) of Section 102 of the Act and not by this Court in exercise of extraordinary jurisdiction under Article

226 of the Constitution. As and when the matter will come up before the first respondent, the first respondent will consider the case of the third

respondent and after hearing the Bank, will pass an appropriate order.

23. The learned counsel for the petitioner, no doubt, invited our attention to a decision of the Division Bench of this Court in Phaltan Shahakari

Sakhar Karkhana Ltd. and Anr. v. State of Maharashtra, through the Secretary, Co-operative and Agriculture Department, Mantralaya, Bombay

and Ors. 1989 CTJ 27 and contended that an order of liquidation u/s 102 can be passed by the Registrar only after application of mind. It was

observed that even though the order is interim in nature, there must be application of mind as an order of winding up of a society and an

appointment of Liquidator should be passed in extreme cases and such drastic power should not be exercised light heartedly.

24. There cannot be two pinions about the ratio laid down in the above ruling. In the instant case, however, keeping in mind the reasons which

weighed with the first respondent, it cannot be said that there is non-application of mind on his part in taking the impugned action. If one looks at

the facts and figures referred to in the interim order, it can safely be said that the first respondent was justified in forming an "opinion" that it was a

fit case to exercise power under Sub-section (1) of Section 102 of the Act. The third respondent Bank has practically ceased working and cannot

fulfil the objects for which it has been established. It is true that the allegations levelled and averments made by the first respondent have been

emphatically denied by the Bank. In our opinion, however, such denials will have to be considered by the first respondent, keeping in mind the

grounds raised by the third respondent Bank at the stage of hearing under Sub-section (2) of Section 102. It is at that stage that final order will be

passed by the first respondent. If the first respondent will be satisfied about the case of the Bank, interim order passed under Sub-section (1) of

Section 102 will be vacated. If the Bank would not be in a position to convince the first respondent, interim order will be confirmed. Even

thereafter it is open to the Bank to take appropriate proceedings in accordance with law and an appropriate forum/authority/Court will consider

the case on merits and will pass an appropriate order according to law.

25. Insofar as the opportunity of hearing is concerned, in our opinion, at this stage i.e. at the stage of exercise of power under Sub-section (1) of

Section 102 of the Act, the first respondent was not obliged to hear the Bank. In our judgment, from the scheme of the Act, it is clear that the

competent Legislature has advisedly and deliberately enacted the provision (Section 102) bifurcating it in two parts. The first part under Sub-

section (1) of Section 102 is interim, interlocutory or provisional stage of proceedings. The second part under Sub-section (2) of Section 102 is a

second stage where final order is made by the Registrar. At the first stage, the Legislature has authorised the Registrar to form an "opinion" on the

basis of objective facts under Clause (a) or (b) of Sub-section (1) and to pass an order of interim winding up. Clause (c) of Sub-section (1) of

Section 102, empowers the Registrar to exercise power suo motu, if any of the four circumstances specified in the said clause is present. Thus,

again there is objective fact on the basis of which such suo motu power can be exercised by him.

26. At the same time, the Legislature thought it fit that keeping in mind the action to be taken by the Registrar of winding up of Society (Bank),

such action must be in conformity with the principles of natural justice and fair play, it enacted Sub-section (2). Thus, the principles of natural

justice have been recognised by enacting that no final order of winding up would be passed by the Registrar without affording an opportunity to the

Society of being heard.

27. In the instant case, merely an interim order is passed on the basis of the materials placed before the Registrar. It, therefore, cannot be said that

the order is arbitrary or unreasonable. The contention, therefore, has no force and must be negatived.

28. True it is that there must be an application of mind by the Registrar at both the stages. It also cannot be gainsaid that in absence of formation of

opinion"" as contemplated by Sub-section (1) of Section 102, no interim winding up order can be made. In our considered opinion, however,

reading the impugned order, it cannot be said that there is non-application of mind. On the contrary, referring to several factors, an order is passed

by the first respondent.

29. The contention that the first respondent has become ""a Judge in his own cause"" has also no substance. It is not a case where a person is

deciding a cause in which he has personal interest. As already noted hereinabove, the Registrar is merely an ex-officio member of the Board of

Directors of the Bank u/s 112-B of the Act. Such an Officer is not disqualified of performing his functions, discharging his duties and exercising his

powers in accordance with the provisions of the Act. This is not a case of personal interest or animosity. At the most, it can be described as

official, departmental or policy bias or bias as to subject matter. It is, however, settled law that such bias would neither disqualify an authority or an

officer from deciding an issue on the ground that such an action would be violative of principles of natural justice nor invalidate the proceedings.

(vide Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, , Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India

and Others, , Re Manchester (Ringway Airport) Compulsory Purchase Order, (1935) All ER 510, Leeson v. General Council of Medical

Education and Registration (1889) (63) Ch D 366, Allinson v. General Medical Council, (1894) 1 Ch D 750 and Hanson v. Church

Commissioner for England (1978) 1 Q.B. 823. A similar view has been expressed by legal scholars and celebrated authors on Administrative Law

[vide Wade Administrative law (7th edn.) 488; de Smith Judicial Review of Administrative Action (5th edn.) 539; and Greeffith and Street

Administrative Law"" (4th edn.) p. 156].

30. Strong reliance was placed by the learned counsel for the petitioners on the following decisions for the proposition that general provisions

should yield to special provisions;

1. The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others,;

2. Imperial Chemical Industries (India) Private Limited Vs. The Workmen,;

3. State of Gujarat and Another Vs. Patel Ramjibhai Danabhai and Others,;

4. U.P. State Electricity Board, v. H. S. Jain;

5. State Vs. N.A. Rahimbhoy,;

6. Ajit Singh and Others Vs. State of Punjab and Another,;

7. Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others,.-

31. In our opinion, however, in the instant case, neither the above said proposition of law nor the ratio laid down in cases cited is applicable.

32. It was also urged that "'shall'" should normally be construed as "'shall'" or "'must'" and should not be read as "'may'". (vide Govindlal Chhaganlal

Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, . When the Act states that there shall be an Agricultural and rural

Development Bank, according to the Counsel, there must be such Bank. If such Bank is ordered to be wound up, the provisions of the Act would

be nugatory.

33. We are unable to uphold the argument. The law, no doubt, mandates that there shall be an Agricultural and Rural Development Bank. But it

also cannot be overlooked that the Legislature with the same pen and ink has enacted Chapter X dealing with liquidation. If the case falls under the

said Chapter, an appropriate order of liquidation has to be passed and the provisions made therein have to be implemented.

34. It was also contended Court that no provision of a statute be read as redundant. [ Hundraj Kanyalal Sajani Vs. Union of India and others,.-

In our opinion, proper reading of the relevant provisions of the statute makes it clear that such an action can be taken by the first respondent

provided it is within the four corners of the law.

35. Relying on State of Tamil Nadu Vs. State of Karnataka and Others, , it was submitted that Court alone can interpret and determine the

jurisdiction. We are in agreement with the above submission. It is clear to us that interpretation of law is the exclusive function of the Judiciary. But,

according to us, the impugned action taken by the first respondent is in consonance with law and as per the provisions of Sub-section (1) of

Section 102 of the Act.

36. It was then urged that while interpreting a statute, intention of the Legislature must be gathered not only from what has been said by the

Legislature but also what has not been said. In support of the above proposition, the following cases have been cited;

1. V. Jagannadh Rao and Ors. v. State of A.P. and Ors., (2001) 10 SCC 401;

2. Union of India (UOI) and Another Vs. Hansoli Devi and Others, ; and

3. Harbhajan Singh Vs. Press Council of India and Others, -

37. In our opinion, however, the above decisions would not apply to the facts of the case. In the case on hand, the action of the first respondent-

Registrar is in consonance with what the Legislature has provided in Section 102 of the Act, and hence the same cannot be held to be bad in law.

38. Before parting with the matter, however, we make one thing clear. In the earlier part of the judgment, we have extracted the operative part of

the order passed by the first respondent under Sub-section (1) of Section 102 of the Act. The order rightly stated that it is merely an interim order.

Considering that fact and the legislative scheme underlying Sub-sections (1) and (2) of Section 102, we have held that at the first stage the

principles of natural justice would not apply. At that stage tentative opinion has to be formed by the Registrar on the basis of which an interim

winding up order can be passed. In the instant case also, such winding up order has been made and the third respondent Bank has been forwarded

the said order along with the grounds on which the said order has been made by the Registrar by affording opportunity of being heard to the Bank.

39. While passing the order, however, in the operative part, it was observed that the first respondent had passed the order having been convinced

that it was in the interest of the Bank's depositors, members and creditors to wind up the business of the bank. The first respondent has proceeded

to state that he has reached the "conclusion" that the third respondent Bank deserved to be wound up.

40. In our opinion, all the above observations should not be treated as final and conclusive but only provisional, tentative or prima facie

observations. As and when the matter will come up for consideration before the first respondent under Sub-section (2) of Section 102 of the Act,

the first Respondent will apply his mind to the explanation of the Bank and pass an appropriate order on its own merits after complying with

principles of natural justice and fair play.

41. With the above clarifications and directions, in our opinion, the present petitions deserve to be disposed of and are accordingly disposed of.

Rule is made absolute to the extent indicated above.

42. The learned counsel for the petitioners at this stage stated that in Writ Petition Nos. 7466 of 2002 and 7392 of 2002, ad-interim relief was

granted by the learned vacation Judge at the time of initial admission hearing. The said order was continued thereafter and is operative till today. It

was, therefore, prayed that the said interim order may be continued till the first respondent will take up the matter and pass final order under Sub-

section (2) of Section 102, after hearing the respondent Bank. It was also prayed that in case the order will be against the respondent Bank, the

same may not be implemented for some time so as to take appropriate proceedings by aggrieved party in accordance with law.

43. When ad interim relief was granted by the learned vacation Judge and is operative till today, in our opinion, ends of justice would be met, if we

continued the said order till final order to be passed by the first respondent under Sub-section (2) of Section 102 of the Act. If the interim order

will be made final order, the same shall not be implemented for a period of two weeks from the date of such order.

Parties be given copies of this order duly authenticated by the Sheristedar/Private Secretary.