

CASE NO.:
Writ Petition (civil) 577 of 2000

PETITIONER:
Rahuta Union Co-op. Bank Ltd. & Anr.

RESPONDENT:
Union of India and others

DATE OF JUDGMENT: 26/02/2004

BENCH:
S. N. Variava & H. K. Sema.

JUDGMENT:
J U D G M E N T

WITH
WP (C) No.578, 579/2000 and TC (C) No.63 of 2003

S. N. VARIAVA, J.

These Writ Petitions and the Transferred Case have been filed challenging a scheme framed by the Reserve Bank of India (for short RBI).

At this stage, some relevant facts may be briefly set out:
On 2nd August, 1985 Sikkim Banking Overseas Corporation Limited got itself registered as a Company in Sikkim. On 22nd October, 1987 its name was changed to Sikkim Banking Limited (for short SBL). On 11th December, 1987 the Banking Regulation Act (for short the Act) became applicable to Sikkim. Section 22 of the Act reads as follows:

"22. LICENSING OF BANKING

COMPANIES.- (1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business in India, shall apply in writing to the Reserve Bank for a licence under this section :

Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of this section or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it :

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely :-

(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;

(c) that the general character of the proposed management of the company will not be prejudicial to the public interest of its depositors;

(d) that the company has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

(g) any other condition, the fulfillment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

(3A) Before granting any license under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.

(4) The Reserve Bank may cancel a licence granted to a banking company under this section -

(i) if the company ceases to carry on banking business in India; or

(ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or

(iii) if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled :

Provided that before cancelling a licence under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or had failed to fulfill any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interest of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with for complying with or fulfilling such condition.

(5) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

(6) The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final."

SBL applied for a license. It appears that RBI did not issue any notice informing SBL that the license could not be granted. Thus SBL continued to carry on banking business by virtue of the proviso of sub-clause (2).

In 1996 RBI pointed out certain operational deficiencies in the working of SBL. SBL was called upon to cure those deficiencies before the license could be issued to it. Thereafter RBI advised SBL to raise additional capital to the extent of Rs. 50 crores by way of rights preferential issue. RBI made it clear that it would consider issue of a license to SBL only after the capital was so raised. SBL managed to raise an extent of Rs. 15.18 crores, out of which approximately Rs. 5.80 crores was by means of diversion of SBL's own funds. In February-March 1997 RBI conducted financial inspection of SBL and found several shortcomings and deficiencies in its functioning.

All the Petitioners have deposited amounts in SBL.

In a special scrutiny conducted in 1998 RBI found that non-performing assets or bad debts were Rs. 58.26 crores, whereas provision was only Rs. 1.52 crores. This meant that SBL had incurred a net loss of Rs. 56.22 crores. Ultimately by a letter dated 15th December, 1998 RBI issued a show-cause-notice to the Managing Director Shri A.M. Mustafi under Section 36 AA(2) and pending reply prohibited him from acting as the Managing Director. In January 1999 RBI removed Shri A. M. Mustafi and appointed three additional Directors on SBL's Board. Thereafter special audit was carried out. As a result of the audit the Government of India was informed about the poor state of affairs in SBL. The Government of India was informed that the funds had been siphoned out to the tune of Rs. 57.50 crores.

On 8th March, 1999, on the advise of RBI, the Government of India passed an Order of Moratorium under Section 45 (2) of the Act. SBL filed a Writ Petition in the High Court of Sikkim challenging the Order of Moratorium. However, the Petition was dismissed on 2nd September, 1999. The Special Leave Petition filed against the Order has also been recently dismissed.

On 21st December, 1999 the Government of India issued an Order notifying a Scheme of Amalgamation under Section 45(7) of the Act. By this scheme SBL was amalgamated with the Union Bank of India (for short UBI). Under the scheme all the depositors were to be paid on pro-rata basis. It is an admitted position that the depositors are only getting 9.037 % of their deposits and they are required to surrender their fixed deposit receipts in return.

It was submitted that the scheme is contrary to the legislative mandate of Section 45 of the Act. It was submitted that the Scheme was unrealistic and not capable of being implemented, as it has not kept the interest of the depositors in mind. It is submitted that there has been no proper audit of SBL. It is submitted that the values shown in the scheme are not the correct values and the Scheme does not reflect the real financial position. It is submitted that the scheme was framed behind the back of the Petitioners and no notice had been issued to them. It was also submitted that since no license had been granted to SBL it could not be considered to be a Bank and therefore RBI had no powers to frame a scheme under Section 45 of the Act. It was further submitted that no serious efforts had been made to recover the debts and that therefore the interest of the depositors has not been taken care of. It was submitted that therefore this Court should set aside the Scheme.

It was denied that the provisions of the Act have not been complied with and/or that suggestions of depositors were not considered before finalizing the Scheme. It was denied that value shown in the Scheme is not correct. It was submitted that all possible

efforts have been made to recover amounts.

In our view, no rational ground of challenge to the scheme has been made out at all. A full audit has been carried out. The Scheme has taken into consideration all known assets of SBL. Efforts to recover debts have been made. However, even if there were no sufficient efforts of recovery that would not be a ground for setting aside the Scheme. Section 22 set out above permitted SBL to continue to operate as a Banking Company. Therefore, the provisions of the Act applied to it.

It must be mentioned that an offer was made to the Petitioners that if they felt that there was no proper recovery the debts could be assigned to them in satisfaction of their dues and they could undertake recoveries. Knowing fully well that there was no feasibility of recovery, the offer was not accepted.

We see no substance in these Writ Petitions and the transferred case. The same stand dismissed with no Order as to costs.

JUDIS