

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7842 of 2008****With****R/SPECIAL CIVIL APPLICATION NO. 7843 of 2008****With****R/SPECIAL CIVIL APPLICATION NO. 7844 of 2008****With****R/SPECIAL CIVIL APPLICATION NO. 7870 of 2008****With****R/SPECIAL CIVIL APPLICATION NO. 7892 of 2008****With****R/SPECIAL CIVIL APPLICATION NO. 9382 of 2008****With****R/SPECIAL CIVIL APPLICATION NO. 9383 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

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|---|---|--|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | |

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DILIPBHAI NANJIBHAI PATEL & 1 other(s)

Versus

STATE OF GUJARAT & 2 other(s)

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Appearance:**ADVOCATE NOTICE SERVED for the Petitioner(s) No. 2****MR SAURABH G AMIN, MR PS CHAMPANERI, MR MANAV MEHTA for the Petitioners.****MR DHAWAN JAYSWAL,AGP for the Respondent(s) No. 1****MR TUSHAR MEHTA(472) for the Respondent(s) No. 3**

MR VC VAGHELA(1720) for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 14/10/2022

CAV JUDGMENT

1.Heard learned advocate Mr. Saurabh G. Amin for petitioners in Special Civil Application No. 7842 of 2008, learned Assistant Government Pleader Mr. Dhawan Jayswal for respondent Nos.1 & 2-State, learned advocate Mr. V.C.Vaghela for respondent No.3, learned advocate Mr. Manav Mehta for the petitioner of Special Civil Application No. 7892 of 2008 and learned advocate Mr. P.S. Champaneri for the petitioners of Special Civil Application No. 7870 of 2008, 9382 of 2008 and 9383 of 2008.

2.By these petitions, the petitioners have prayed for quashing and setting aside the judgment and order dated 16.05.2008 passed by the Gujarat State Cooperative Tribunal (For

short "the Tribunal") confirming the order dated 28.06.2004 passed by respondent no.2 inquiry officer under section 93 of the Gujarat Cooperative Societies Act, 1961 (For short "the Act, 1961").

3. Section 93 of the Act, 1961 reads as under :

"93. Power of Registrar to assess damages against delinquent, promoters, etc. (1) "Where, in the course of or as a result of an audit under section 84, or an inspection under sub-section (8) of section 84, or an inquiry under section 86 or an inspection under section 87 or section 88, or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 86, or the person authorised to inspect the books under sub-section (8) of section 84, 87 or 88 or the Liquidator under section 110], that any person who has taken any part, in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of such audit, inquiry, inspection or order for winding up, misapplied or retained, or become liable or accountable for, any money or property of the

society. or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may investigate the conduct of such person or persons and after framing charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to him representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

(2) The Registrar or the person authorised under sub- section (1) in making any order under this section, may provide therein for the payment of the costs or any part thereof of such investigation, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible."

4. By order dated 22.02.2022, this Court observed as under :

"6. With regard to other Special Civil Applications listed and tagged along with Special Civil Application No. 7842 of 2008 are concerned, in Special Civil Application No. 7843 of 2008, advocate notice is unserved whereas in Special Civil Application No. 7844 of 2008, advocate notice is served for the petitioner No.1 and learned advocate Mr. Vimal Patel has filed his vakalatnama for petitioner No.2.

7. Learned advocate Mr. Manav Mehta submitted that he has no instructions to appear for the petitioner so far as Special Civil Application No. 7892 of 2008 is concerned.

8. Learned advocate Mr. Champaneri also has no instructions to appear for the petitioners so far as Special Civil Application Nos. 7870 of 2008, 9382 of 2008 and 9383 of 2008 are concerned.

9. It appears that these petitions were heard earlier and were allowed by the Co-ordinate Bench [Coram: Hon'ble Mr. Justice Mohinder Pal, as his Lordship was then] vide order dated 29.09.2016. The respondent-Bank challenged the order by preferring Letters Patent Appeal No. 789 of 2017 and other allied matters. The Division Bench [Coram:

Hon'ble Acting Chief Justice Anant S. Dave and Hon'ble Mr. Justice Biren Vaishnav] by order dated 22.04.2019 allowed the Letters Patent Appeal and common oral judgement dated 29.09.2016 was ordered to be quashed and set aside and these special Civil Applications are restored to file to be decided afresh by the Single Judge on merits in light of the observations made in the said order.

10. The Division Bench has observed in the aforesaid order as under:

"9 Having perused the judgment under challenge of the learned Single Judge, what is evident is that though such contention was raised as is evident on reading para 5 of the Page 8 of judgment, the same was not decided by the learned Single Judge. The learned Single Judge, solely considered the issue in context of the case being similar to those of the Mahesana and the Kheralu Banks.

10. We are in agreement with the submission of Mr.Vaghela that there could not have been a parity between cases of the banks of Mahesana and Kheralu to that of the appellant bank inasmuch as in those cases, the Inquiry Officer had exonerated the respondent-Directors which is not so in the case on hand.

11 Considering the aforesaid arguments, we deem it fit to remand the matters back to the learned Single Judge for fresh consideration, particularly to examine the issue on hand in context of the Circular of RBI referred to hereinabove and in view of the fact that though the contention that the Circular was not applicable to the appellant was raised, the same was not decided by the learned Single Judge."

11. After remand of the matters by the Division Bench, these matters were listed before this Court from time to time and lastly, on 20.01.2022. Learned advocates Mr. Champaneri and Mr. Manav Mehta sought time to contact the respective petitioners and to take instructions. However, today both the learned advocates have submitted that they have no instructions to appear for the respective petitioners after remand of the case.

12. Considering the submissions made by learned advocate Mr. Amin for the petitioners of Special Civil Application No. 7842 of 2008, I am of the opinion that such submissions would be applicable to the petitioners of all other petitions as the Gujarat State Cooperative Tribunal has passed a common order rejecting the appeals filed by all the petitioners challenging the

common order passed by the respondent-authority.

13. In such circumstances, irrespective of the appearance of the learned advocates for the petitioners and considering the submissions of learned advocate Mr. Saurabh Amin applicable to all the petitioners, in the interest of justice, the matters are finally heard as it pertains to the year 2008 as no prejudice would be caused to the petitioners as sufficient care is taken by learned advocate Mr. Amin on facts as well as law with regard to issues involved in these matters."

5. In view of above order, this group of petitions was heard finally.

6. The facts of all these petitions are similar as the petitioners were either members of the Executive Committee and/or Ex-Director of respondent no.3- Baroda Central Cooperative Bank Limited which is a society registered under the provisions of the Act, 1961 and respondent no.3 society is engaged in the business of banking.

7. Since the surplus fund was available with respondent no.3 and with a view to earn more interest on surplus funds, it was decided to invest such surplus fund of respondent no.3-bank in various financial institutions/ Non Banking Finance Companies including CRB Capital Market Limited (For short "the said company") as such institutions were granting higher rate of interest.

8. The meeting of the Executive Committee was held on 24.06.1996 whereby by Resolution No.45 it was resolved to invest/deposit surplus funds with other institutions/ companies by way of deposit. The decision of the Executive Committee was approved by the Board of Directors in the meeting held on 20.07.1997. Respondent no.3-bank made an investment of Rs. 70 Crore with various institutions and out of the said amount, amount of Rs. 67 Crore was recovered except

an amount of Rs. 3 Crore deposited with the said company.

9. Summary Suit No.4447/1997 was instituted on behalf of the respondent no.3 by respondent no.2 inquiry officer against the said company and others for decree of Rs.3,53,04,148/- and interest of Rs. 78,444/- before the City Civil Court, Ahmedabad who passed the decree dated 22.09.2000 for the amount claimed in the suit.

10. Thereafter, the recovery proceedings were also initiated against the said company by filing the execution proceedings. The proceedings under section 138 of the Negotiable Instruments Act, 1881 were also initiated against the said company in view of dishonour of post-dated cheque issued by it and complaint nos. 1753 to 1758 of 1997 were filed against the said company and its Directors.

11. Respondent no.3 issued a show cause notice dated 11.10.1999 to the petitioners to show cause as to why inquiry under section 93 of the Act, 1961 should not be initiated in view of the audit report submitted by the Special Auditor for the period from 1.04.1996 to 31.03.1998 in respect of loss caused to respondent no.3 amounting to Rs. 3,53,04,148/- for the investment made in the said company.

12. The petitioners filed reply to the show cause notice. Respondent no.2 inquiry officer, however, by order dated 28.06.2004 held the petitioners liable for the loss suffered by respondent no.3 bank pursuant to investment made in CRB Capital Market Limited and claiming excess sitting fees, foreign travel expenses or litigation expenses and passed a separate order of recovery of proportionate amount of loss of Rs.

3,05,12,260/- from each of the petitioner.

13. The petitioners being aggrieved by the order passed by the inquiry officer under section 93 of the Act, 1961 preferred appeals before the Gujarat State Cooperative Tribunal (For short "the Tribunal") being Appeal Nos. 587, 589, 595 and 611 of 2004.

14. It emerges from the record that the Tribunal passed the interim orders directing the petitioners to deposit amount as per the order passed under section 93 of the Act, 1961 during the pendency of the appeal which were challenged by the petitioners before this Court and this Court granted stay against the interim order passed by the Tribunal and directed the Tribunal to hear the appeals filed by the petitioners. As the details of such interlocutory proceedings are not relevant for the purpose of deciding

these petitions, the same is not dealt with in detail.

15. The Tribunal thereafter heard the appeals and by judgment and order dated 16.05.2008 dismissed the appeals filed by the petitioners, confirming the order passed by respondent no.2 fastening the liability upon the petitioners under section 93 of the Act, 1961 for the loss suffered by respondent no.3 bank by making investment in the said company in the year 1996-1997 and on other issues of foreign travel, litigation expenses. etc.

16. This Court (Coram : Hon'ble Mr. Justice Ravi R. Tripathi, As His Lordship was then) by order dated 10.07.2008 admitted these petitions and granted interim relief after taking into consideration the peculiar facts of the case which are set out in judgment and order dated 16.03.2006 passed by the Division

Bench in Special Civil Application Nos. 15859,15862, 15863 of 2004 arising from the interim orders of the Tribunal, more particularly paragraph nos. 9 to 12 thereof, by staying order dated 16.05.2008 passed by the Tribunal as well as the order dated 28.06.2004 passed by respondent no.2 and disqualification arising from liability under section 93 of the Act, 1961.

17. Thereafter this Court (Coram : Hon'ble Mr. Justice Mohinder Pal, As His Lordship was then) by common judgment and order dated 29.9.2016 allowed these petitions. The Division Bench however in Letters Patent Appeal No. 789 of 2016 and other allied matters considering the objections raised on behalf of the respondent no.3 bank that the contentions raised were not considered in judgment and order dated 29.09.2016, remanded the matters back again for fresh

consideration, particularly, to examine the issue on hand in context of circular of RBI referred to in the said order and to examine whether such circular is applicable or not. As observed in order dated 22.02.2022 reproduced here in above, these petitions are finally heard on submissions made by learned advocate Shri Saurabh G. Amin for the petitioner in Special Civil Application No.7842/2008 as facts in other petitions are similar.

18. Learned advocate Mr. Amin submitted that the petitioners who are Ex-Directors and/or members of the Executive Committee of the respondent no.3 bank have taken due care before making investment of the surplus reserve funds of respondent no.3 bank.

19. Learned advocate Mr. Amin invited the attention of the Court to the averments made in the petition in support of such

submission, more particularly, in paragraph nos. 5 to 7 which reads as under :

"5. The rating credit symbol of the said company was "AAA" and had a good reputation and goodwill in the market having immovable properties in Metropolitan Cities like Delhi, Mumbai, Bangalore, Hyderabad, Ahmedabad and other places. The Reserve Bank of India also gave a Banking License to the said company. The petitioner states that the Reserve Bank of India issued guidelines dated 23/11/1995 to all the cooperative banks permitting to deposit in 13 private sector Mutual Funds which includes CRB Mutual Fund Annexed hereto and marked as ANNEXURE "C" is a copy of the letter dated 23/11/1995. Even the Charity Commissioner has issued a list permitting investment /deposits in various institutions which includes the said company. An Office Order bearing No.41/97 has also been issued to that effect by the Charity Commissioner. Annexed hereto and marked as ANNEXURE "D" is a copy of the list along with the office order bearing No. 47 / 97.

6. The other institutions like Gujarat Industrial Investment Corporation, State Bank of India, Bank of India, Bank of Baroda, Bank of Rajasthan, Federal Bank, Karur Vysaya Bank. Union Bank of India,

Bank of Tokyo, State Bank of Travancore. United Western Bank, Kheda Jilla Madhyasth Sahkari Bank, Mehsana Central Cooperative Bank, Dena Bank. Kenfin Home Ltd. and other banks and societies have invested and deposited money with the said company. Even Mr. Atmarambhai Patel who was President of Mehsana District Madhyasth Sahkari Bank and the then Cabinet Minister with the Government of Gujarat had also deposited the money with the said company for short term period.

7. Considering the overall reputation and goodwill of the said company, an amount of Rs.4 Crores was deposited by way of inter-corporate deposit for a short term period of 91 days with the said company. In lieu thereof the said company vide letter dated 08/01/1997 allotted 26 Lakhs shares of R40 each to respondent no.3 along with duly signed transfer deeds and hoard resolutions of the respective holder. During the month of January 1997, the lowest and highest rate of the share of the said company was Rs.19.75 and Rs. 25.50 respectively. In short in the month of January 1997 the value of the said shares given to respondent no.2 was worth Rs.54 Crores. Further six post dated cheques were issued by the said company for the amount inclusive of interest which was payable on maturity of the deposit. Annexed hereto and marked as ANNEXURE "E" is

a copy of letter dated 08/01/1997 along with the stock price of the said company for the month of January 1997. Thereafter in an Annual General Meeting held on 30/09/1997 the deposit made was approved vide Resolution No.2 passed in the said meeting, a copy whereof is annexed hereto and marked as ANNEXURE "F".

20. Referring to above facts which is not denied by respondent no.3 bank, it was submitted that respondent no.2 inquiry officer as well as Tribunal misinterpreted the provisions of section 93 of the Act, 1961 by fastening the liability upon the petitioners though none of the ingredients thereof is attracted in the facts of the case.

21. It was submitted that reliance placed on application of section 71 of the Act, 1961 read with bye-law no.6 of respondent no.3 bank is not applicable in the facts of the case and no prior permission of the Registrar

was required at the relevant point of time for making investment by the respondent no.3-bank. Learned advocate Mr. Amin referred to and relied upon section 71 of the Act, 1961 as it existed in 1996-1997 prior to amendment which reads as under :

"71. Investments of funds.- (1) A society may invest, or deposit its fund,

(a) in a Central Bank, or the State Co-operative Bank,

(b) in the State Bank of India,

(c) in the Postal Savings Bank,

(d) in any of the securities specified in Section 20 of the Indian Trusts Act, 1882 (II of 1882).

(e) in shares, or security bonds, or debentures, issued by any other society with limited liability, or

(f) in a Scheduled co-operative bank as defined in clause (2) of Section 2 of the Reserve Bank of India Act, 1934 and having its registered office within the State or in any nationalised bank;

(g) in any land or building,

(i) where the money in a building

fund established by a society is sufficient for the purpose; or

(ii) where the money in such a fund is insufficient for the purpose or where a society has not established such fund, with the previous sanction of the Registrar:

Provided that the Registrar shall endeavour to decide the question as to previous sanction be given or not, within ninety days of the receipt of an application for such sanction,

(g) in any corporation owned or controlled by the Government of Gujarat and other Scheduled Banks not covered under clause (f), with the prior approval of the State Government subject to such terms and conditions as may be prescribed in this behalf:

Provided that in the case of the State Co-operative Bank, the Central Co-operative Banks and the Primary Agricultural Credit Co-operative Societies, the Reserve Bank of India may issue further guidelines restricting or enlarging the scope of investment in any institutions approved for the purpose under this section.]

(2) Notwithstanding anything contained in sub-section (1), the Registrar may, with the approval of the State Co-operative Council, order a society or a class of societies to invest any funds in a

particular manner, or may impose conditions regarding the mode of investment of such funds."

22. Learned advocate Mr. Amin submitted that on perusal of the section 71 only clause (g) thereof would be applicable and for that purpose Rule 29 of the Gujarat Cooperative Societies Rules, 1965 (For short "the Rules") is relevant which reads as under:

"29. Investment of Funds.- (1) With the previous sanction of the Registrar any society may invest its funds or a portion thereof

[(a) [***]

(b) in loans raised by a local authority in the State under the authority of the Local Authorities Loans Act, 1914 (IX of 1914).

(c) in the purchase or leasing of land or buildings, and in the construction of buildings:

Provided that the purchase of such land or the construction of such building is likely to be advantageous to the society in the conduct of its business,

(2) Notwithstanding anything contained in sub-rule (1), an urban

co-operative bank-

(a) which has a paid up share capital of not less than Rs. 50,000, and a reserve fund of not less than Rs. 50,000.

(b) which has completed ten years from the date of its registration, and

(c) which is classed A or B at the last audit made under Section 84, may invest its surplus funds in such shares or debentures of any company registered under the Companies Act, 1956 as may be approved by the Registrar."

23. It was therefore, submitted that considering section 71 read with Rule 29, no prior permission of the Registrar was required and that the inquiry officer has passed the order dated 28.06.2004 without any basis.

24. Learned advocate Mr. Amin submitted that respondent no.2 and Tribunal have committed an error in holding the petitioners liable under section 93 of the Act, 1961 inasmuch as

in case of Mehasana District Central Cooperative Bank Ltd. and Kheralu Nagrik Sahkari Bank Ltd. on similar facts with regard to investment made in CRB Capital Market Limited by the said bank, a contrary view is taken by the inquiry officer holding that the Directors of the said banks were not liable for any loss under section 93 of the Act, 1961. It was pointed out that the inquiry officer in case of both the banks held that due care was taken by the Directors and CRB Capital Market Limited was having A+ rating and was recognized by IDBI and RBI and therefore, there was no question of any misapplication or misfeasance by the directors for investment made in the said company. It was further pointed out from the said order that GIIC which is a Government company has also made investment in CRB Capital Market Limited. The inquiry officer in case of both the banks held that there was

no need for prior permission of the Registrar in view of provisions of section 17(1)(d) of the Act, 1961 as the investment in the said company can be considered as investment and security under section 20 of the Indian Trust Act, 1982. It was further held that it was not mandatory for the said banks to take permission under section 71 as the said section refers to word "may" for investment to be made by the cooperative society.

25. Referring to above orders which are placed on record at Annexure-J of Special Civil Application No.7842/2008, learned advocate Mr. Amin submitted that respondent no.2 inquiry officer in facts of the case has taken a contradictory view.

26. It was further submitted that RBI has also by letter dated 23.11.1995 addressed to all Primary Cooperative Banks have permitted

the investment with the said company by considering it to be a safe investment. It was therefore, submitted that the petitioners have relied upon such letter of the RBI along with other consideration of higher rate of interest and investment made by other financial institutions in the said company. There was no intention on the part of the petitioners to cause any loss to the respondent no.3 bank.

27. It was submitted that the petitioners have neither misapplied, retained the funds of respondent no.3 bank nor have become liable or accountable for such loss due to misfeasance or breach of trust in relation to the respondent no.3 bank. It was submitted that respondent nos. 2 and 3 have therefore, invoked the provisions of section 93 of the Act, 1961 contrary to the facts and prima facie evidence on record and the impugned

order confirmed by the Tribunal are therefore, liable to be quashed and set aside.

28. In support of his submissions reliance was placed on the decision of this Court in case of **Shankarbhai Devjibhai Patel and others v. Sabarkantha Jilla Sahakari Kharid Vechan Sangh Ltd. and others** reported in 1984 GLH 498 to submit that the petitioners cannot be held personally liable for the amount invested by the society as there is nothing on record to show that the petitioner have committed any misfeasance or breach of trust for any personal gain.

29. Reliance was placed on the decision in case of **Laxmidas Kurjibhai & Ors. v. District Registrar & Ors.** reported in 2002(3)GLH 773 wherein it is held by this Court in the facts of the said case that when it was resolved in

the meeting and approved by the general body in its annual meeting to distribute certain gifts to all the members of the society, though such distribution was not in consonance with the provisions of the Act, 1961, however, since no individual member alone was benefited, such distribution was not held to be mala fide and section 93 of the Act, 1961 could not be invoked to make the petitioner personally liable for the loss suffered by the society. It was submitted that in facts of the present case also, the decision to make investment in the said company was approved in the meeting of the Executive Committee as well as the Board of Directors and therefore, loss suffered by respondent no.3 bank to the tune of Rs. 3 Crore out of total investment of Rs. 70 Crore cannot be compensated by the petitioners as the petitioners have not been benefited by such investment made by respondent no.3 bank

and therefore, section 93 of the Act, 1961 cannot be invoked to make the petitioners personally liable for such loss suffered by respondent no.3 bank.

30. It was further submitted that the petitioners cannot be held liable for breach of bye-law no.6 of respondent no.3 bank for making investment by respondent no.3 bank as it clearly provides for making investment as per the provisions of section 71 of the Act, 1961 or as per section 20(e) of the Indian Trust Act.

31. On the other hand, learned advocate Mr. V.C. Vaghela appearing for respondent no.3 bank submitted that there is a clear violation of the provisions of section 71 of the Act, 1961 inasmuch as no prior permission of the Registrar was obtained and therefore, the inquiry officer has rightly held that in

absence of prior permission from the Registrar, investment could not have been made by respondent no.3 bank and as the petitioners were at helm of affairs at the relevant point of time in the year 1996-1997, the petitioners have misapplied the funds of the bank causing huge loss.

32. It was further submitted that reliance placed by the petitioners upon the letter issued by RBI is also not applicable for investment made by respondent no.3 bank as such letter was applicable to the Primary Cooperative Banks whereas the petitioner is a District Cooperative bank and such instructions was not meant for respondent no.3 bank.

33. It was submitted that loss was caused to respondent no.3 bank due to negligence of the petitioners and respondent no.3 bank also had

to incur the expenses for litigation for recovery of such loss. It was further submitted that the petitioners have undertaken foreign travel without any sanction and have also charged exorbitant sitting fees and therefore, there is clear violation of provisions of section 93 of the Act, 1961.

34. Pursuant to the directions issued by this Court respondent no.3 bank has filed additional reply on 8.09.2016 to provide information as to how much profit, bank had earned on investment of Rs. 67 Crore in the year 1996-1997. In the said affidavit, deponent of the respondent no.3 bank has stated on oath as under:

"2. It is submitted that as per the records of the Bank the Bank has invested about Rs.31 Crores in the Loyds Finance Limited. It is submitted that bank has invested Rs.2 Crores in Mafatial Finance

Limited. About 4 Crores have been invested in Mafatlal Industries Limited. The bank has invested 14 Crores in Gujarat State Fertilizers company limited. The Bank has invested Rs. 1 Crores in Alembic Chemicals works Limited. The Bank has invested about 10 Crores in Anagram Finance Limited. The Bank has invested about 8 Crores in CRB Capital Market Limited. In CRB Capital out of 8 crores 5 Crores have been returned but 3 Crores and its interest therein are not returned. The Bank in the year 1996-97 out of this investments have earned interest income of Rs.271.60 Lakhs on 67 Crores. It is submitted that therefore, in all the Bank has earned Rs.271.60 Lakhs on the investment of 67 Crores in the year 1996-97."

35. Considering the provisions of section 93 of the Act, 1961, Registrar of the Cooperative Society has power to assess damage against delinquent, promoters, etc. in course of or as a result of an audit under section 84 or an inquiry under section 86 or an inspection under section 87, or winding up of a society, if the Registrar is satisfied on the basis of such report that any person

who has taken part in organization or management of the society or any deceased or past or present officers of the society has within the period of five years prior to the date of such report, misapplied or retained or become liable or accountable for any money, property of the society, or has been guilty of misfeasance or breach of trust in relation to society, then Registrar or person authorized on his behalf, may investigate conduct of such person or persons and after framing charges against such person or persons and after giving reasonable opportunity to them, make an order requiring such persons to repay or restore the money or property or any part thereof with interest as may be determined or to contribute such sum to the assets of the society by way of compensation with regard to the misapplication, retention, misfeasance or breach of trust as may be determined. In

facts of the case, respondent no.2 inquiry officer has held the petitioners liable for gross negligence for causing loss by misapplying the funds of respondent no.3 bank in CRB Capital Market Limited without obtaining the prior permission of the Registrar under section 71 of the Act, 1961 and on other grounds. It was held that due to negligence and lack of due care by the petitioners, respondent no.3 bank had to suffer loss.

36. On perusal of section 71 of the Act, 1961 read with bye-law no.6 of the bye-laws of respondent no.3 bank, it was held that the petitioners have misapplied the funds of the respondent no.3 bank without prior permission of the Registrar causing loss of more than Rs. 3 Crore and therefore, under the provisions of section 93 of the Act, 1961 order was passed on 28.06.2004 for recovery

of proportionate amount of loss of Rs.
3,05,12,260/- from the petitioners/ex
directors as under :

| Sr. No | Name and address of accused | Special Civil Application No. | Investment of Rs. 3 Crore in C.R.B | Expenses of tour outside India. Rs.1,25,000/- | Advocate Fees and Court Expense. Rs. 3,40,000/- | Seating Fee of 1996-97 and excess fund collected Rs. 24,910/- | Seating Fee of 1997-98 and excess fund collected Rs. 22,350/- | Total amount Rs. 3,05,12,260/- | Note/Mark |
|--------|---|-------------------------------|------------------------------------|---|---|---|---|--------------------------------|-----------|
| 1 | Shri Dilipbhai Nanjibhai Patel Sudamapuri Society Manjalpur, Jain Derasar road, Vadodara-11 | SCA No.7842/2008 | 33,34,000/- | 1,25,000/- | 18,889/- | 3,510/- | 2925/- | 34,84,324/- | |
| 2 | Shri Sureshbhai Jhaverbhai Patel Mu.Bithili Tal. Sinhori Vadodara | - | 33,34,000/- | - | 18,889/- | 2950/- | 3000/- | 33,88,839/- | |
| 3 | Shri Vijaykumar Ramdas Patel Station road, Mu.Naswadi, Vadodara | - | 33,34,000/- | - | 18,889/- | 1525/- | 1650/- | 33,56,064/- | |
| 4 | Advocate Shri Ashwinbhai Chitabhai Patel B-27 Uma Society, Mu.Dabhoi, Vadodara | - | 11,11,000/- | - | 18,889/- | 525/- | 600/- | 11,31,014/- | |
| 5 | Shri Arvindbhai Chitabhai Patel Mu.Kandari, Tal.Karjan, Dist. Vadodara | - | 11,11,000/- | - | 18,889/- | 825/- | 1050/- | 11,31,764/- | |
| 6 | Shri Dinsha Nanubhai Patel B/49 Indrapuri Society, Harni Road Vadodara | SCA NO.9382/2008 | 11,11,000/- | - | 18,889/- | 675/- | 825/- | 11,31,389/- | |
| 7 | Shri Vipinchandra Ravjibhai Patel A/12, Vallabh Nagar society, opposite Mental hospital, Karelibaug, Vadodara | SCA NO.7870/2008 | 11,11,000/- | - | 18,889/- | 1325/- | 1125/- | 11,32,339/- | |
| 8 | Shri Haribhai Nathabhai Patel Mu. Diver, Tal.Sinhori Dist. Vadodara | SCA NO.7844/2008 | 11,11,000/- | - | 18,889/- | 1575/- | 1800/- | 11,33,264/- | |
| 9 | Shri Ganpatsinh Mavsinh Solanki 129- Jaggannathpuram, Manjalpur, Vadodara | - | 11,11,000/- | - | 18,889/- | 600/- | 450/- | 11,30,949/- | |
| 10 | Shri Praveensinh Kesarisinh Parmar 24- Narsinhnagar Near S.T. Depo, | - | 11,11,000/- | - | 18,889/- | 975/- | 1575/- | 11,32,439/- | |

| | | | | | | | | | |
|-----|--|----------------------|--------------|---|--------------|--------|--------|-------------|--|
| | Mu. Padre, Dist. Vadodara | | | | | | | | |
| 11 | Shri Rameshbhai Ambalal Patel Geet Bungalow, GIDC Road, Village Manjalpur, Vadodara | SCA NO. 7843/2008 | 11,11,000/- | - | 18,889/ - | 450/- | 775/- | 11,31,114/- | |
| 12 | Shri Jayantibhai Ishwarbhai Patel 7 Jayesh Colony, Near Besides Navyug school, Fatehganj, Vadodara. | - | 33,34,000/- | - | 18,889/ - | 2050/- | 1350/- | 33,56,289/- | |
| 13 | Shri Narendrabhai M. Patel Mu. Kharkhadi, Tal. Padra, Dist. Vadodara | SCA NO.7892/2008 | 11,11,000//- | - | 18,889/ - | 1100/- | 1050/- | 11,32,039/- | |
| 14 | Shri Nanalal Dhayabhai Chokshi Mehta Pole, Vadodara | - | 11,11,000/- | - | 18,889/ - | 1150/- | 300/- | 11,31,339/- | |
| 15. | Shri Prahmaladbbhai Ishwarbhai Patel 20- Manmohan Society, Lal Baug Road, Vadodara | SCA NO.9383/2008 | 11,11,000/- | - | - | 825/- | - | 11,11,825/- | |
| 16 | Shri Dineshbhai Jethabhai Patel Mu.Bhaatpura, Tal. Sankheda, Dist. Vadodara | - | 11,11,000/- | - | - | 675/- | - | 11,11,675/- | |
| 17 | Shri Praveenbhai M. Patel (GENERAL MANAGER) Bank has not provided address. | - | 33,34,000/- | - | 18,889/ - | - | - | 33,52,889/- | |
| 18. | Shri Dasratbhai Salubhai Rathva Mu.Harakhpur, Tal.Pavi , Jetpur, Vadodara. | - | - | - | 18,889/ - | - | 300/- | 19,189/- | |
| 19 | Shri Himmatsinh U. Vakil Mu.5-Devla , Tal. Vaghodiya, Vadodara | - | - | - | 18,889/ - | - | 600/- | 19,489/- | |
| 20 | Shri Naginbhai Kushalbhai Patel Mu.Savli, Tal. Savli, Dist. Vadodara | - | - | - | 18,889/ - | - | 525/- | 19,414/- | |

37. As per the provisions of section 71 as it existed in the year 1996-1997, respondent no.3 bank may make investment in various securities stated therein. Therefore, there was no need for prior permission of the

Registrar as per the said section at the relevant point of time, the premise based on which the impugned order dated 28.06.2004 is passed by respondent no.2 inquiry officer is, therefore, contrary to the provisions of section 71 of the Act, 1961 existing at the relevant point of time. Similarly Rule 29 of the Rules provides for previous sanction of Registrar in loans raised by local authority for any purchase or leasing of land and building and in construction of building only. Therefore, prior permission of Registrar was not required for investment of funds in any financial institution.

38. It also emerges from the record as a matter of fact, investment made by the respondent no.3 bank in the year 1996-97 as per the details given in additional affidavit of the respondent bank as under :

| Sr No | Investment made in | Amount Invested |
|-------|---|-----------------|
| 1 | Loyds Finance Limited | 31 Crore |
| 2 | Mafatlal Finance ltd | 2 Crore |
| 3 | Mafatlal Industries ltd | 4 Crore |
| 4 | Gujarat State Fertilizers company limited | 14 Crore |
| 5 | Alembic Chemicals | 1 Crore |
| 6. | Anagram Finance Limited | 10 Crore |
| 6 | CRB Capital Market Ltd. | 8 Crore |
| | Total | 70 Crore |

39. From the above details, it is further revealed that in CRB Capital Market Limited out of Rs. 8 Crore, Rs. 5 Crore have been returned but Rs. 3 Crore and interest thereon was not received back by respondent no.3 bank and further the respondent no.3 bank earned interest income of Rs. 271.60 Lakh on Rs. 67 Crore in the year 1996-1997.

40. In view of above facts emerging on record, it cannot be said that the

petitioners have remained negligent and did not take due care while making investment in CRB Capital Market Limited. Therefore, the petitioner cannot be fastened with liability to compensate the loss suffered by respondent no.3 bank for making investment in regular course of business without there being any allegation of personal gain by the petitioner.

41. The Tribunal while confirming the order passed by the inquiry officer has also failed to take into consideration the provisions of section 71 which existed at the relevant point of time. The Tribunal has misapplied the provisions of section 73 which refers to the final authority of the society and section 74 which provides for powers and functions of the Executive Committee. The petitioners have not in any manner violated the powers conferred upon them for taking a

decision to invest surplus fund of respondent no.3 bank and therefore, the Tribunal has committed an error in confirming the impugned order dated 28.06.2004.

42. It is true that letter issued by RBI may not be applicable to respondent no.3 bank being a District Cooperative Bank and inquiry report in case of other banks being Mehasana District Central Cooperative Bank and Kheralu Nagrik Sahkari Bank Ltd. may not be considered as a binding precedent for the inquiry officer who has arrived at independent findings in facts of the present case. However, considering the facts of the present case, it cannot be said that the petitioners have misapplied the funds of respondent no.3 bank or by any misfeasance or breach of trust so as to compensate the loss suffered by respondent no.3 bank under section 93 of the Act, 1961, more

particularly, when there was no breach of section 71 of the Act, 1961 read with bye-law no.6 of the bye-laws of the Bank in any manner.

43. With regard to the other issues regarding charging excess sitting fees, foreign travel expenses and litigation expenses which were considered by the inquiry officer for the purpose of invoking section 93 of the Act, 1961, the same cannot be considered for the purpose of section 93 of the Act, 1961 in absence of any independent findings arrived at by the inquiry officer in this regard.

44. In view of foregoing reasons, petitions deserve to be allowed and are accordingly allowed. The impugned order dated 28.06.2004 passed by respondent no.2 inquiry officer under section 93 of the Act, 1961 and order

dated 16.05.2008 passed by the Tribunal in the respective appeals are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

RAGHUNATH R NAIR

(BHARGAV D. KARIA, J)