

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 7479 of 2013

1. Tundi Primary Agricultural Credit Cooperative Society (PACS) through its Chairman-Nand Kishor Savarnkar S/o Late Sadanand Sonar, At Village : Tundi, Post Office: Tundi, Police Station: Tundi, District: Dhanbad

2. Keska Rajabhitha Primary Agricultural Credit Cooperative Society [PACS] through its Chairman-Md. Abdul Ansari S/o Md. Abbas Ansari, At Village: Kadaiya, Post Office : Keska, Police Station: Tundi, District Dhanbad

... .. **Petitioners**

Versus

1. State of Jharkhand, represented through its Secretary, Department of Cooperative, State of Jharkhand, 4th floor of Project Building, Dhurwa, Post Office: Dhurwa, Police Station: Jagarnathpur, District: Ranchi, Jharkhand.

2. The Registrar, Cooperative Societies, Jharkhand. 2nd floor of Engineers Hostel No. 3. Near Golchakra, Dhurwa, Post Office: Dhurwa, Police Station: Jagarnathpur, District: Ranchi, Jharkhand.

3. The Deputy Commissioner, Dhanbad-Cum-Administrator, The Dhanbad Central Cooperative Bank Ltd., Dhanbad, Post Office, Police Station & District: Dhanbad

4. The Managing Director, The Dhanbad Central Cooperative Bank Ltd., Dhanbad, Post Office, Police Station & District: Dhanbad

5. Reserve Bank of India, through its Regional Office at Ranchi, Pragati Bhawan, Kutchery Road, Post Office: Ranchi [GPO], Police Station: Sadar Ranchi, District: Ranchi.

6. National Bank for Agriculture and Rural Development, (NABARD) through its Assistant General Manager, Karamtoli Road, Near Opposite Adivasi College Hostel, Post Office: Ranchi, Police Station: Ranchi, District Ranchi, Jharkhand

... .. **Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners : Mr. V.P. Singh, Senior Advocate

: Mr. Rajesh Lala, Advocate

For the State : Mr. Suresh Kumar, SC (L&C)-II

: Mr. Ashish Kumar Shekhar,
A.C. to S.C. (L&C)

For the Resp. Nos. 3 & 4 : Mr. Krishna Murari, Advocate

For the Respondent No. 5: Mr. Pandey Neeraj Rai, Advocate

: Mr. Rishav Raj, Advocate

21/08.04.2024

Learned counsels for the parties are present.

2. This writ petition has been filed for the following reliefs:

“(i) For quashing of Memo No. 3146(Ranchi) dated 02.12.2013 [Annexure-3] issued by the Respondent No. 2 directing the Administrator [Respondent No. 3] of the Dhanbad Central Cooperative Bank, Dhanbad to again convene a meeting of its share-holders under wrong provision

of Rule 39 of the Jharkhand Cooperative Societies Rules, 1959, for considering the proposal of compulsory amalgamation of the D.C.C. Bank, Dhanbad with the Jharkhand State Cooperative Bank.

(ii) For quashing of Letters as contained in Reference No. 543/13 dated 04.12.2013 [Annexure-4] whereby and where under in compliance to the Order of the Respondent No.2 and the consequent Order of the Administrator of the Dhanbad Central Cooperative Bank Limited [Respondent No. 3], the Managing Director of The Dhanbad Central Cooperative Bank Limited [Respondent No.4] has convened a meeting of the share-holders of the DCC Bank, Dhanbad on 20.12.2013 to consider the matter of compulsory amalgamation of the Dhanbad Central Cooperative Bank with the Jharkhand State Cooperative Bank under Section 39 of the Jharkhand Cooperative Societies Rules, 1959.”

The background.

3. Petitioner Nos.1 and 2 are short-term Cooperative Credit Societies registered under the *Jharkhand Cooperative Societies Act, 1935 [hereinafter referred to as “the Act of 1935”]* as also governed by the *Jharkhand Cooperative Societies Rules, 1959 [hereinafter referred to as “the Rules of 1959”]*. Petitioner Nos. 1 & 2 are the share-holders of the Dhanbad Central Cooperative Bank Ltd. and are accordingly, members of its general body and have obtained financial loan/assistance from it for its members. The State of Jharkhand is also a share holder of Dhanbad Central Cooperative Bank as has been stated in the counter-affidavit.

4. At the time of filing the writ petition, Dhanbad Central Cooperative Bank was under supersession since December, 2006 and in the instant writ it has been represented by its Administrator. However, new managing committee has been constituted in the year 2018 and a counter affidavit has also been filed by the new managing committee supporting the petitioners.

5. The Cooperative Credit Societies are registered under the said Act of 1935, which cater to agricultural financing and are classified under three different categories [Three Tier System], in terms of their area of operation as follows: -

(1) **Panchayat Level Cooperative Societies:** - These were registered as PACS [Primary Agricultural Credit Societies] who operate at the grass root level and directly interact with the

agricultural farmers and catered to their financial needs pertaining to agriculture.

(ii) **District Level Cooperative Societies:** - For each district there was one District Central Cooperative Bank, the area of operation of which generally covered the entire district in which it was situated and they were also entitled to carry out the function of a bank having a banking licence duly granted to them by the Reserve Bank of India and were also governed by the relevant provisions of the Banking Regulation Act. It was the primary object of the Cooperative Banks to provide financial inputs to the PACS whenever required and needed on minimum rate of interest, who in turn, financed its farmer members on a minimum rate of interest.

(iii) **State Level Cooperative Society:** - For the entire State, there was one State Cooperative Bank, the area of operation of which covers the entire State with the primary object to provide financial inputs to the District Central Cooperative Banks, wherever required and needed on minimum rate of interest.

6. Initially in the State of Jharkhand, there existed nine District Central Cooperative Banks out of which one, that is the Daltonganj District Central Cooperative Bank, was liquidated some years back by the Reserve Bank of India and the rest included the respondent-the Dhanbad Central Cooperative Bank Limited, Dhanbad.

Cause of action of this case.

7. The Council of Ministers of the Government of Jharkhand, in its meeting held on 08.10.2002, resolved to have a "Two Tier System" for Cooperative Societies instead of the existing "Three Tier System" by abolishing District Central Cooperative Banks. The proposal for amalgamation contained in resolution no. 733 dated 08.10.2002 has been brought on record by supplementary counter affidavit filed on behalf of the respondent no. 2 dated 13.03.2023. The aforesaid resolution of the Council of Ministers dated 08.10.2002 also reveals that two tier cooperative credit structure was sought to be adopted in the State in the larger interest of the cooperative societies and their members in respect of credit flow and smooth and hassle-free functioning of cooperative banking system for the whole State. The resolution reveals that out of eight district central cooperative banks in the State of Jharkhand, most of them were under weak condition and

the Dhanbad Central Cooperative Bank and Dumka Central Cooperative Bank were two amongst the eight who had positive net worth as on 31.03.2001. The resolution reveals that the district central cooperative banks were not following the financial discipline, directions of the department, directions of Reserve Bank of India and NABARD due to which there was a lot of financial mismanagement leading to poor financial status due to which the farmers were not being granted agricultural loan. It has been recorded in the said resolution that that “Three Tier System” of cooperative banks failed to achieve the objects. With this background, the financial condition of all the eight-district central cooperative banks were mentioned and the benefit of “Two Tier System” was enumerated in paragraph no. 5 of the resolution itself as under:

- a) For the entire State there would be only one headquarter and one managing committee which will lead to less expenditure on establishment.
- b) For the entire State, there would be one policy and one method of work which will facilitate effective control and supervision.
- c) In the present times, there is very less opportunity of increase in business of small banks as the facility of draft etc. is not available with them and a lot of time and expenses is incurred in the matter of sending the fund from one district to another.
- d) The small district central cooperative banks are not getting adequate industrial information and are not able to take advantage of such information and they are not in a position to bear the expenses for such establishment. The appropriate information will be provided in a centralized manner which will increase their working capacity.
- e) The farmers will be granted loan at lesser rate of interest.
- f) The employees will be inducted on central basis which would ensure induction of efficient employees.
- g) The recruitment process in district central cooperative banks is defective due to which incompetent employees are being inducted which has also resulted in nepotism in the matter of employment.

h) In “Two Tier System” there would be short-term, mid-term and long-term loan and the same would cater not only to the requirement of agriculture sector but also to the requirement of industrial and service sector and thereby a single window system could be introduced.

8. It has also been recorded in the said resolution that the refinance to the cooperative banks is coming from NABARD and are being disbursed by the cooperative banks to PACS/LAMPS etc. It has also been observed that the cooperative bank is primarily in the ownership of its members and nomination of member cooperative societies and other members by the State Government would establish its credibility and ensure targeted flow of fund so that maximum benefit with optimum facilities could be made available to the farmers.

9. It was observed in the said resolution that for the aforesaid purpose of implementation of two-tier system instead of three tier system, State Cooperative Bank was to be established under the Act of 1935 and prior to that, the required approval from RBI/NABARD would also be required. The resolution also indicates that the necessary formalities with regard to amalgamation in terms of Rules 38 and 39 of the Rules of 1959 were required to be undertaken and the State Government would not bear any additional financial liability and after formation of State Cooperative Bank, steps would be taken to make the bank economically viable. The proposal was said to have been approved by the departmental minister (the Chief Minister), Finance Department, Law Department and was to be placed before the Cabinet for approval.

10. In furtherance to the aforesaid resolution and the policy decision of the State Government, Jharkhand State Cooperative Bank for the State became functional from 01.09.2012 after completing the required formalities.

11. The records reveal that the in-principle approval was granted by RBI vide letter dated 11th October 2013 to the proposal of the Government of Jharkhand for the amalgamation of eight District Central Cooperative Banks with Jharkhand State Cooperative Bank on the following conditions: -

“a. Board and General Body resolution to be passed by all 8 CCBs and JStCB indicating their willingness for merger/amalgamation.

b. Certificate from State Govt. to the effect that there is no objection from any quarter for proposed merger of CCBs with JStCB.

c. Preparation of a scheme for merger/amalgamation. Prior to this all covenants of the MoU entered between the Bihar StCB and JStCB on 31 August 2012 should be honoured by the executants.

d. RCS recommendation for the scheme for merger/amalgamation.

e. The due process as required under the provisions of the Jharkhand State Coop Societies Act, 2008 and the Jharkhand State Cooperative Societies Rules, 2008 (Rule 38) as adopted by the Jharkhand State Govt. should be followed.

f. Preparation of consolidated Balance Sheet & Profit & Loss A/C after merger of CCBs with JStCB.

g. Preparation of viability report fulfilling various requirements like minimum share capital etc. as per B R Act, 1949 (AACS) and compliance with CRAR norms.

h. Commitment from the State Govt. for financial support, if any, required for ensuring the viability of the merged entity and contribute towards shortfall, if any, in CRAR, within a definite time frame.

i. At every stage, the provisions of the Jharkhand State Coop Societies Act must be complied.

J. DICGC clearance is needed for the proposal as CCBs are covered under the scheme. CCBs should obtain NOC from DICGC.

k. A MoU should be executed between the constituents i.e. all 8 CCBs, JStCB and Govt. of Jharkhand covering issues of governance structure, management, manpower/HR issues, amicable solution of transfer of assets and liabilities of each bank to JStCB, after settlement of outstanding issues with Bihar StCB.”

12. The respondent no.2 issued letter dated 21.10.2013 to the respondent no.3 directing him to convene a meeting of the General Body of the Dhanbad Central Cooperative Bank for considering the proposal of amalgamating the said Bank with the Jharkhand State Cooperative Bank. Ultimately, a General Body meeting of the shareholders of Dhanbad Central Cooperative Bank was convened on 24.11.2013 and the proposal of the respondent nos.1 & 2 to amalgamate

Dhanbad Central Cooperative Bank with the Jharkhand State Cooperative Bank was rejected.

13. Only after a week of the aforementioned rejection, the respondent no. 2 again passed an order as contained in memo no.3146 dated 02.12.2013 directing the Administrator [respondent no.3] of the Dhanbad Central Cooperative Bank, Dhanbad to again convene a meeting of its share- holders, this time under Rule 39 of the Rules of 1959, for considering the proposal of compulsory amalgamation of the Dhanbad Central Cooperative Bank, Dhanbad with the Jharkhand State Cooperative Bank.

14. In compliance to the order of the respondent no.2 and the consequent order of the Administrator of the Dhanbad Central Cooperative Bank Limited [respondent no.3], the Managing Director of the Dhanbad Central Cooperative Bank Limited convened a meeting of the share-holders of the said bank on 20.12.2013 to consider the matter of compulsory amalgamation of the Dhanbad Central Cooperative Bank with the Jharkhand State Cooperative Bank under Rule 39 of the Rules of 1959.

15. Before the scheduled date of meeting on 20.12.2013, the petitioner no.1 represented before the respondent no.2 by a representation dated 05.12.2013 through Speed Post. Through the said representation, the petitioner no. 1 submitted before the respondent no. 2 that the provision of Rule 39 of the Rules of 1959 is not meant for compulsory amalgamation of a Cooperative Bank and that Rule 39 is no more in force for it has been automatically repealed by Section 67 of the Jharkhand Cooperative Societies Act, 2008. The respondent no.2 did not respond to the said representation and it has been alleged that the respondent no.2 was bent upon to amalgamate the Dhanbad Central Cooperative Bank by taking recourse to an entirely wrong provision of law. A reference was also made to the recommendation of “Vaidyanathan Committee” stating that the 97th amendment to the Constitution of India was approved and the right to form a cooperative society was incorporated as a fundamental right.

16. It is the case of the petitioners that Rule 39 of the Rules of 1959, is entirely meant for the compulsory amalgamation of Societies i.e., Primary Agricultural Credit Societies or similar type of grass-root societies and does not stipulate amalgamation of district central cooperative banks with State Cooperative Bank and the matters relating to “Cooperative Banks”, including its matter of amalgamation, has been dealt with separately in Chapter-VIB of the Jharkhand Cooperative Societies Act, 2008.

17. It is alleged by the petitioners that the respondent no.2 misinterpreted, misconstrued and misapplied Rule 39 of the Rules of 1959 for amalgamation of district central cooperative banks with Jharkhand State Cooperative Bank. There were no charges of mismanagement of the fund of the Dhanbad Central Cooperative Bank, Dhanbad which in fact was running in profit as on that date and was under supersession since December, 2006 and for conducting the election of its Managing Committee a Writ Petition was pending before this Hon'ble Court.

18. The petitioners further allege that on account of the 97th amendment of the Constitution of India, as the situation stands today, even the Reserve Bank of India is not in a position to give sanction for amalgamation of a Cooperative Society without obtaining the consent / approval of the share-holders of such Cooperative Society for the said purpose. By virtue of the 97th amendment of the constitution of India, the right to form a Cooperative Society has been made a fundamental right for the citizen of India and therefore the existence of a Cooperative Society cannot be arbitrarily and unilaterally extinguished. The share-holders of a cooperative society are its actual owners and State Government has no authority whatsoever to interfere in its management. The State Government has been obliged to amend the existing Cooperative Societies Act by passing the Jharkhand Cooperative Societies (Amendment) Act, 2011 by virtue of which, much of the functional autonomy of the cooperative societies has been restored in key issues of its management.

Filing of the writ petition and the interim order passed by this Court.

19. However, before the said meeting scheduled on 20.12.2013 could be convened, the present writ petition was filed on 13.12.2013 questioning the very invocation of Rule 39 of the Rules of 1959.

20. On 20.12.2013 the following interim order was passed by this Court: -

“Until further order, the respondents shall not proceed with any process of amalgamation of the concerned cooperative society.”

Counter-affidavits of Respondent Nos.1 and 2

21. 1st counter affidavit was filed by the respondent nos. 1 and 2 on 07.01.2014 opposing the prayer made in the writ petition stating that Dhanbad Central Cooperative Bank, Dhanbad is also a kind of central cooperative society ; Section 44AO of the Act of 1935 gives finality to the permission or sanction or requisition of RBI regarding scheme for amalgamation; the proposal for amalgamation was in the interest of people at large and also for better banking services as well as lower rate of interest to farmers. It was also stated in the said counter-affidavit that after amalgamation cooperative banks would be much more viable, uniform, financially strong with changing need of cooperative sector and it was apparent that the amalgamation was essential for financial consolidation of both the banks along with the benefits of farmers, labourers and rural crafts man and direction for compulsory amalgamation by the respondent no.2 under Rule 39 of the Rules of 1959 was in accordance with law. It has further been stated in the counter-affidavit that there is no such Act as Jharkhand Cooperative Societies Act, 2008; 97th constitutional amendment Act has been declared ultra-vires by Hon’ble Gujarat High Court, no amendment was carried out by the state of Jharkhand in terms of 97th constitutional amendment Act and hence petitioners cannot take resort to the law which is not the law of the land and remaining 7 central cooperative banks have voluntarily assented for amalgamation with Jharkhand State Cooperative Bank. A copy of the communication dated 17.10.2013 by

NABARD to the cooperative department of the respondent - State communicating the conditions of in-principle approval to amalgamation by RBI has been filed as Annexure- B to the said counter-affidavit and the conditions contained therein have already been quoted above.

22. 2nd affidavit of respondent nos.1 and 2 was filed by way of supplementary counter-affidavit pursuant to order dated 25.03.2021. In the said supplementary counter-affidavit filed on behalf of the respondent no.2 dated 18.08.2021, a letter dated 30.03.2017 has been annexed which was issued by RBI directing NABARD to convey to the State of Jharkhand the final approval for amalgamation of 7 District Central Co-operative Banks with Jharkhand State Co-operative Bank, subject to fulfilment of the conditions as annexed.

23. Another supplementary counter-affidavit dated 13.03.2023 was filed by the respondent no.2 wherein, *inter alia*, it has been brought on record that the respondent no. 6 vide letter dated 27.11.2014 (Annexure-H) informed respondent no. 1 that in the light of the interim direction of the Court, the earlier direction of amalgamation of 8 banks was modified and changed it to 7 banks. Consequently, the respondent no. 2 requested RBI vide letter dated 30.09.2016 (Annexure-I) to approve the amalgamation of the 7 cooperative banks as the 7 District Central Cooperative Bank and Jharkhand State Cooperative Bank had entered into Memorandum of Understanding and ultimately the final approval was granted by RBI and was informed to NABARD vide letter dated 30.03.2017 (Annexure-K) with regard to 7 District Central Cooperative Banks; ultimately, vide notification dated 31.03.2017 (Annexure-L) , the respondent No. 2 notified the amalgamation of 7 District Central Cooperative Banks with the Jharkhand State Cooperative Bank. Thus, the amalgamation of the Dhanbad Central Cooperative Bank, Dhanbad was left out on account of the interim order passed by this Court. It was also brought on record that the State Government has share capital of 75 lakh and Member Societies have share capital worth Rs. 5 crores and thus the State government is a major stake-holder in the Dhanbad District Central Cooperative Bank. The respondent-State submitted that as per the aforesaid provisions under Rule 39 of the Rules of 1959

the State has rightly invoked power and issued the impugned orders as contained in Annexure-3 and 4 of the writ petition in order to make an even and uniform cooperative banking system in the whole State and amalgamate the Dhanbad Central Cooperative Bank in Jharkhand State Cooperative Bank in compliance with the policy decision of the State Cabinet which is expedient for the better health and environment of the cooperative credit structure and banking system as well.

Counter-affidavit of Reserve Bank of India

24. It is the case of Reserve Bank of India that under Section 44AK of the Jharkhand Cooperative Societies Act, 1935, no order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction or of division or transfer of assets and liabilities of a cooperative bank can be made without the previous sanction in writing of the Reserve Bank of India. It has been stated that on the basis of recommendations received from the NABARD, RBI vide its letter dated 11th October 2013 accorded 'in-principle approval' to the proposal of the Government of Jharkhand for the amalgamation of eight District Central Cooperative Banks with Jharkhand State Cooperative Bank. However, a revised letter was received in RBI from NABARD containing the revised proposal of amalgamation and thereafter, the Reserve Bank of India vide its letter dated 18th November 2014 conveyed 'in-principle approval' to the revised proposal of the Government of Jharkhand for amalgamation of seven District Central Cooperative Banks in Jharkhand other than Dhanbad District Central Cooperative Bank Limited with Jharkhand State Cooperative Bank and ultimately, the Reserve Bank of India vide letter dated 30th March 2017 granted final approval to the proposal of Government of Jharkhand for the amalgamation of seven District Central Cooperative Banks with the Jharkhand State Cooperative Bank subject to fulfilment of certain conditions.

It has been further averred in the counter-affidavit that RBI is vested with the responsibility of superintendence and control of the banking business in the country under the provisions of Banking Regulation Act,

1949 and has been vested powers to grant license, conducting inspections, giving directions, advices etc. and is under obligation to see that the banking business is carried on by banks prudently and adhering to sound principles of banking.

With effect from 01st March, 1966, the provisions of the aforesaid Act of 1949 was extended to cooperative societies which were carrying on banking business vide Banking Laws (Application to Cooperative Societies) Act, 1965 and then the Act of 1949 with certain modifications has been made applicable to cooperative societies carrying on business of banking and a new Part V was introduced which consisted of Section 56 to the effect that the provisions of the Act of 1949 as in force from time to time shall apply in relation to cooperative societies as they applied to banking companies but subject to modifications as laid down in the said Section.

It has been specifically stated in paragraph 12 of the counter-affidavit of RBI that certain provisions of Banking Regulation Act, 1949 particularly incorporation, amalgamation and winding up were not made applicable to the cooperative banks. It has been stated that the rural cooperative credit system in India is primarily mandated to ensure flow of credit to the agriculture sector comprises of the short-term and long-term cooperative credit structures; the short-term cooperative credit structures operate with a three-tier system-Primary Agricultural Credit Societies (PACS) at village level, District/Central Cooperative Banks (DCCBs) at the District level and the State Cooperative Banks (StCBs) at the State level. It has been specifically stated that the PACS are outside the purview of the aforesaid Act of 1949 and hence are not regulated by the Reserve Bank of India.

Section 5 of the aforesaid Act of 1949 defines “cooperative bank” to mean a State Cooperative Bank, a Central Cooperative Bank and a Primary Cooperative Bank and it also provides that the Central Cooperative Bank and State Cooperative Bank shall have the meanings respectively assigned to them in the NABARD Act, 1981; Section 2(u) of the NABARD Act, 1981 defines “State Cooperative Bank” as the

principle cooperative society in a State, the primary object of which is the financing of other cooperative societies in the State.

Arguments of the Parties

25. The petitioners have argued this case from time to time and it would be useful to refer to some of the arguments as recorded in the order sheets of this case.

A. Vide order dated 25th March 2021 the issue involved in this case was mentioned and the corresponding arguments of the petitioners was also recorded. The issue mentioned was as follows: -

“The instant writ petition is filed under Article 226 of the Constitution of India whereby and whereunder the decision of the State Government dated 02.12.2013 for amalgamation of Dhanbad Central Cooperative Bank, Dhanbad with Jharkhand State Cooperative Bank has been questioned on the ground of non-observance of mandate as contained under Section 44 (AK) of the Jharkhand Cooperative Societies Act, 1935.”

B. It was argued by the petitioners on 25th March 2021 that decision has been taken for amalgamation of Dhanbad Central Cooperative Bank, Dhanbad with Jharkhand State Cooperative Bank in exercise of power under Section 44(AK), as would be evident from letter dated 21.10.2013[Annexure-1] and the aforesaid provision specifically provides that the decision for amalgamation only be taken with the previous sanction of the Reserve Bank of India but no such decision pertaining to previous sanction of the Reserve Bank of India has been brought on record even though counter affidavit was filed by the respondents-State on 08.01.2014, but save and except a communication of the NABARD, which only stipulates about in principle previous sanction of the Reserve Bank of India in taking decision of the amalgamation, no other document has been filed.

C. Consequently, time was granted to the respondents-State to file further affidavit to answer the legal issue, and the interim order dated 20.12.2013 was continued till next date of hearing.

- D. A supplementary counter-affidavit was filed by the State annexing the required consent of the Reserve Bank of India for amalgamation and on 15.03.2023 it was submitted by the State that the order of amalgamation has been passed under Rule 39 of the Co-operative Societies Rules and that such decisions are essentially matter of policy and such amalgamation would be in the interest of the members of the Co-operative Bank.
- E. On the next date, learned counsel for the respondent no.5 - Reserve Bank of India had submitted that he had received instruction to file a counter- affidavit and he shall take care of the order dated 25.03.2021 while filing the counter-affidavit. Accordingly the counter-affidavit was filed by respondent no.5 . Thereafter, the case was argued on two dates, that is 16.02.2024 and then on 19.02.2024 and the matter was posted for judgment on 22.03.2024.
- F. The arguments of the parties as recorded on the aforesaid two dates are as under:-

Order dated 16th February 2024

“Heard the learned counsel for the parties.

2. The learned senior counsel for the petitioners has raised the following points during the course of argument:

(i) There has been no approval of Cabinet to adopt two tier system from existing three tier system vide memo dated 8th October 2002 which has been annexed along with the supplementary counter affidavit; it was just a proposal and final decision of the State Government has not been brought on record; it was for the respondents to bring on record the final approval of the State Government and has referred to Section 106 of the Evidence Act as such approval is within the special knowledge of the respondent-State. As per Rules of Executive Business such decision was required to be notified.

However, neither the Rules of Executive Business have been placed during the course of hearing nor any such provision has been pointed out by the learned senior counsel.

(ii) There was an earlier attempt for taking step for upgradation of the Dhanbad Central Co-operative Bank vide letter contained in Memo No. 1428 dated 3rd August 2007 and such step was withdrawn at the appellate stage as mentioned in order dated 13th July 2015 passed in L.P.A No.80 of 2009. By referring to this order, the learned senior counsel has submitted that there has been repeated step taken by the State to disturb the peaceful

and profitable functioning of the Dhanbad Central Co-operative Bank and one of such steps was the aforesaid order of upgradation which has been withdrawn.

(iii) The condition precedent for amalgamation i.e. the approval from the Reserve Bank of India has not been taken in the instant case and accordingly the entire action of the State is vitiated.

(iv) Rule 39 of the Jharkhand Co-operative Societies Rules, 1959 does not apply to Co-operative Banks as the same is applicable only for amalgamation of Co-operative Societies such as Primary Agriculture Co-operative Credit Societies (PACS) and Large Area Multipurpose Societies (LAMPS).

3. Arguments of the learned counsel for the petitioners are concluded.

4. Since the Court time is over, post this case on 19th February 2024 at 2:15 PM for arguments of the respondents.”

Order dated 19th February 2024

“Learned counsel for the parties are present.

2. Although the argument of the petitioners was concluded on 16.02.2024, the learned counsel for the petitioners has submitted that on the last date, an important statutory provision could not be pointed out and accordingly he refers to chapter VI C of Jharkhand Co-operative Societies Act and in particular refers to section 44 AV (2) and submits that the said chapter was introduced in the year 2011 and under the provisions of subsection 2 of section 44 AV there is a provision for autonomy to short term cooperative credit structure society and therefore the rules as has been sought to be made applicable to the respondent cooperative society is not at all applicable.

3. The learned counsel for the State while opposing the prayer of the petitioner has submitted that since the point regarding approval of Cabinet was not raised in the writ petition, the document in connection with the same was not annexed. However, he has produced a copy of the decision dated 08.10.2002 along with his notes of argument to submit that the required approval of the Cabinet was taken on 08.10.2002 itself. The learned counsel further submits that so far as the plea regarding non-approval from RBI is concerned, in the supplementary counter-affidavit dated 18.08.2021 filed by the State, one document dated 11.10.2013 has been annexed as Annexure – F/1 which reflects that in principle the RBI had approved for amalgamation of eight District Co-operative Banks. Concerning the applicability of the Rules of 1959, the learned counsel has submitted that the respondent cooperative society is fully governed by the provisions of the Co-operative Societies Act as well as the Rules; their registration, approval of bye-laws, amendment of bye-laws, the election of the managing committee etc. are all governed by the provisions of the Acts and the said Rules and, therefore, it is not open for them to say that Rule 39 is not applicable on them. He has also

referred to section 2 (n) of the Cooperative Societies Act to submit that it defines "Central Co-operative Bank" to include Central Society; he has also referred to section 2 (o) of the Cooperative Societies Act and submits that "Central Society" has also been defined.

4. However, during the course of arguments, it transpired that the Central Society was duly defined under the Bihar Cooperative Societies Rule, 1959 in Rule 2 (xi) which was also the same definition as section 2 (o); there have been certain amendments in the section vide Act 21 of 2015 and central cooperative society has been defined under section 2 (o) in the year 2015 vide Act 21 of 2015.

5. The learned counsel has submitted that since the entire affairs of the respondent cooperative society are governed by the provisions of Acts and Rules, it is not open to the petitioners to say that Rule 39 of the Rules does not apply. So far as the provision of section 44 AV (2) is concerned, the learned counsel has submitted that the same relates to the matters mentioned therein and has nothing to do with the provisions of amalgamation of different District Co-operative Societies wherein tier II is sought to be eliminated.

6. The learned counsel appearing on behalf of the RBI has reiterated the stand taken by RBI in the counter affidavit. He has stated that in principle there was approval by RBI for the amalgamation of all eight banks but ultimately there was a modification and the approval was granted only concerning the seven cooperative banks. He has referred to section 114 of the Evidence Act to submit that as per the Evidence Act, all the official transactions may be assumed to be taken by law in the regular course of business of the State unless there is a specific challenge to such action.

7. Learned counsel appearing on behalf of the respondent-Dhanbad Central Co-operative Bank has submitted that the required exercise in terms of section 44(a) (k) was already completed once the proposal for amalgamation was declined by the bank on 24.11.2013 itself. The learned counsel submits that there is no question of applicability of Rule 39 of the Rules of 1959. The learned counsel has also submitted that section 44(a) (k) was inserted for the first time in the year 1981 and the Rules under the Co-operative Societies Act were framed as back as in the year 1959 and therefore at the time when the Rules were framed there was no contemplation regarding the applicability of Rule 39 to the co-operative Banks. The learned counsel has also submitted that initially there were three levels of cooperative banks, state, district, and primary level, and subsequently, the state had taken a decision to do away with the second level, but the mode and method to do away with the second level is required to be followed. He has submitted that the Dhanbad District Central Co-operative bank was a profit-making bank and the State is trying to forcibly take over the profit-making bank de hors the rules. The learned counsel has submitted that the stay order was passed on 20.12.2013 by this Court restraining the respondents from undertaking the process of amalgamation and the meeting rejecting the proposal was passed as back as

on 24.11.2013 itself. Learned counsel has also referred to Annexure-B to the counter affidavit filed by the State dated 17.10.2013 to submit that there was an alteration in connection with the proposal for amalgamation and he submits that the amalgamation was subject to certain conditions. The learned counsel has also referred to the counter affidavit filed by the Reserve Bank of India paragraphs 11 and 12. The learned counsel has also submitted that though the respondent Bank has not specifically challenged the impugned order in the present case, but is fully supporting the case of the petitioners since the impugned order has been challenged by the Shareholders of the respondent Bank. He has also relied upon the judgment passed by the Hon'ble Supreme Court reported in (1990) 1 SCC 328 paragraph 14 to submit that the present case cannot be said to be premature and the cause of action to file the case had become ripe given how the respondent-state was taking the steps by invoking rule 39 which does not apply to the respondent Bank.

8. Learned senior counsel for the petitioner in rejoinder argument has referred to section 2(m) and section 2(o) of the Co-operative Societies Act to submit that Rule 39 of the Rules of 1959 does not cover a banking society. He has also referred to Article 166(3) of the Constitution of India and submitted that the Rules of executive business are required to be complied with and has submitted that the cabinet decisions that have been produced during the course of hearing by the respondent are not sufficient. However, even today the rules of executive business have not been produced before this Court for consideration.

9. Upon a query by this Court concerning Annexure-3 the learned counsel for the State has submitted that there is no discussion in connection with the financial condition of the respondent bank for amalgamation and it only refers to the better administration of the credit to be given to the concerned beneficiaries.

10. Arguments concluded.

11. Post this case for pronouncement of judgment on 22nd March 2024.”

Findings of this Court.

26. On the basis of the arguments advanced by the parties following issues arise for consideration in this case: -

(a) Whether the so-called decision dated 08.10.2002 of the Council of Ministers of the State of Jharkhand to amalgamate all the district central cooperative banks with Jharkhand State Cooperative Bank in order to adopt “Two Tier System” from existing “Three Tier System” can be said to be a decision taken by the State Government in accordance with law?

- (b) Whether the cooperative banks which are governed under Chapter VI-B of Cooperative Societies Act can be amalgamated without previous sanction/approval in writing from Reserve Bank of India in view of special provision contained in Section 44 (AK) of Jharkhand Cooperative Societies Act, 1935 in the light of the fact that Annexure-C to the counter affidavit filed by Reserve Bank of India makes it clear that it had given final approval for amalgamation only in respect of 7 district central cooperative banks named therein which does not include Dhanbad Central Cooperative Bank?*
- (c) Whether Rule 39 of Jharkhand Cooperative Societies Rules, 1959 dealing with compulsory amalgamation of societies is applicable for the purposes of amalgamation of cooperative banks or its application is limited to amalgamation of non-banking cooperative societies such as PACS (Primary Agricultural Credit Societies) and LAMPS (Large Area Multi-Purpose Societies)?*
- (d) Whether in the matter of amalgamation the provision of Rule 39 of Rules of 1959 can override the provision of section 44 of Jharkhand Cooperative Societies Act, 1935 and section 44A of Banking Regulation Act, 1949?*
- (e) Whether the provision of compulsory amalgamation of cooperative banks in terms of Rule 39 of Jharkhand Cooperative Societies Rule 1959 is contrary to the provision of Article 43B and Para IX B introduced vide 97th Constitutional Amendment Act, 2011?*
- (f) Whether decision making process while issuing Annexure- 3 of the writ petition whereby a decision has been taken for compulsory amalgamation of Dhanbad Central Cooperative Bank with Jharkhand State Cooperative Bank in terms of Rule 39 is sustainable in law?*

Issue no.(a)

27. The decision dated 08.10.2002 to amalgamate all the eight-district Central cooperative banks in State of Jharkhand after formation of Jharkhand State Cooperative Bank on account the reasons mentioned in the decision itself was never challenged by the petitioners and no such prayer has also been made in the writ petition. However, arguments have been advanced by the writ petitioners that the said decision dated 08.10.2002 was not having the approval of the cabinet and was not followed by any notification. This Court finds that in order

to meet the aforesaid arguments of the petitioners, though not based on the pleadings and prayers made in the writ petition, the respondent State has filed memo no. 733 dated 08.10.2002 along with the written submissions to submit that the decision had the approval of the Cabinet. The petitioners have failed to produce any provision of law requiring issuance of any notification for taking steps for amalgamation of cooperative societies under the provisions of Rule 38 /39 of the Rules of 1959. This Court is of the considered view that in absence of any specific challenge to the decision dated 08.10.2002 such arguments of the petitioners are beyond the scope of the writ petition. In fact all the district central cooperative banks including the respondent Dhanbad Central Co-operative Bank as well as the petitioners have acted pursuant to the decision dated 08.10.2002 by convening meetings of their general body for considering the proposal of voluntary amalgamation in terms of Rule 38 of the Rules of 1959 in which all the district central cooperative banks except Dhanbad Central Co-operative Bank agreed for the proposal. The records reveal that after passing of the proposal for voluntary amalgamation of the 7 out of 8 district central cooperative banks in terms of Rule 38 of the Rules of 1959, the matter was referred for final approval by RBI who after scrutinizing the records has granted the final approval. The process of amalgamation of 7 out of 8 district central cooperative banks arising out of the decision dated 08.10.2002 has attained finality. The petitioners were aggrieved when the respondent no.2 exercised the powers under Rule 39 of the Rules of 1959 directing the Dhanbad Central Co-operative Bank to convene meeting for compulsory amalgamation. In the aforesaid facts and circumstances of this case, this Court finds no reason to interfere with the decision of the State Government dated 08.10.2002. **The issue no.(a) is answered as follows:-**

The decision dated 08.10.2002 of the Council of Ministers of the State of Jharkhand to amalgamate all the district central cooperative banks with Jharkhand State Cooperative Bank in order to adopt "Two Tier System" from existing "Three Tier System" having been approved by the cabinet is a decision taken by the State Government in accordance with law. Moreover, there

being no specific challenge to the said decision, such arguments are beyond the scope of the writ petition.

Issue no.(b)

28. The facts of the case, as mentioned above, reveal that initially the petitioners challenged the action of the respondent nos.1 and 2 by alleging non-observance of mandate as contained under section 44 (AK) of the Jharkhand Cooperative Societies Act, 1935. However, after filing of the counter affidavits by the respondents including RBI, the petitioners have taken a stand that since final approval for amalgamation has been granted only in respect of 7 district central cooperative banks named therein, which does not include Dhanbad Central Cooperative Bank, there is no decision for amalgamation of respondent Dhanbad Central Co-operative Bank with Jharkhand State Co-operative Bank. The facts of the case narrated above clearly demonstrate that RBI had granted 'in principle approval' for amalgamation of all the 8 district central cooperative banks including Dhanbad Central Co-operative Bank but on account of interim order of stay granted by this Court vide order dated 20.12.2013, which was the scheduled date of meeting, the RBI confined the 'in principle approval' to the remaining 7 district central cooperative banks who had willfully given their concurrence for amalgamation in terms of Rule 38 of the Rules of 1959 and completed the process of final approval of amalgamation of only 7 district central cooperative banks with Jharkhand State Cooperative Bank. The interim order will certainly merge with the final order and the process of compulsory amalgamation of the respondent cooperative bank was stayed. In the aforesaid circumstances, it cannot be argued by the petitioners that Reserve Bank of India gave approval for amalgamation in respect of only 7 district central cooperative banks and the respondent Dhanbad Central Cooperative Bank has been excluded. However, the nature and extent of approval granted will be considered later in this judgement while considering issue no. (f). **The issue no.(b) is decided as under:-**

The cooperative banks which are governed under Chapter VI-B of Cooperative Societies Act cannot be amalgamated

without previous sanction/approval in writing from Reserve Bank of India in view of special provision contained in Section 44 (AK) of Jharkhand Cooperative Societies Act, 1935. Annexure-C to the counter affidavit filed by Reserve Bank of India is confined to 7 district central cooperative banks named therein and does not include Dhanbad Central Cooperative Bank on account of the reasons of interim order passed by this court and the interim order will merge with the final order. It cannot be said that approval of the RBI was not relating to Dhanbad Central Cooperative Bank. However, the nature and extent of approval granted will be considered later in this judgement while considering issue no. (f).

Issue nos. (c) and (e)

29. The development of law and role of the Reserve Bank of India (RBI) in the matter of banking including banking through cooperative societies is apparent from the counter affidavit filed by RBI and not disputed by the petitioners by filing any rejoinder. RBI is a statutory body constituted under Section 3 of Reserve Bank of India Act, 1934 and is vested with the responsibility of superintendence and control of the banking business in the country under the provisions of Banking Regulation Act, 1949. Under the aforesaid Act of 1949, the Reserve Bank of India has been vested various powers with respect to banking companies, such as granting licenses, conducting inspections, giving directions, advices etc. and is under obligation to see that the banking business is carried on by banks prudently and adhering to sound principles of banking. In order to prevent the emergence of weak urban cooperative banks and also to ensure the growth of cooperative banking on sound lines, in the year 1965, the provisions of the aforesaid Act of 1949 were extended to cooperative societies which were carrying on banking business vide Banking Laws (Application to Cooperative Societies) Act, 1965 and the Act of 1949 with certain modifications. In the said Act of 1949, a new Part V has been introduced which consisted of Section 56 and every cooperative bank covered by the Act of 1949 is obliged to comply with the provisions of the said Act as applicable to cooperative societies and also directions/guidelines issued by the Reserve Bank of India from time to time.

30. It has been specifically stated in paragraph 12 of the counter-affidavit of RBI that certain provisions of the Act of 1949 particularly incorporation, amalgamation and winding up were not made applicable to the cooperative banks. It has also been specifically stated in the counter affidavit of RBI that the PACS are outside the purview of the aforesaid Act of 1949 and hence are not regulated by the Reserve Bank of India.

31. In the judgement passed by the Hon'ble Supreme Court in the case of *“Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited and Others”* reported in (2015) 8 SCC 1, the background of the Constitution (Ninety-seventh Amendment) Act, 2011 with regards to cooperative societies have been considered. The said constitutional amendment came into effect on 15.02.2012. The statement and objects of the 97th constitutional amendment provides that there was a need to initiate fundamental reforms to revitalize cooperative societies in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management. The proposed amendment aimed to ensure that the cooperative societies in the country function in a democratic, professional, autonomous and economically sound manner. The amendment aimed at providing for independent professional audit; empowering the State Governments to obtain periodic reports of activities and accounts of cooperative societies; It was expected that these provisions will not only ensure the autonomous and democratic functioning of cooperatives, but also ensure the accountability of management to the members and other stakeholders and shall provide for deterrence for violation of the provisions of the law. Apart from providing for the right to form cooperative societies to be a fundamental right under Article 19 of the Constitution of India and insertion of Article 43-B under the directive principles of State policy on promotion of cooperative societies, the 97th Amendment also introduced a new Part IX-B on cooperative societies which came into effect on 15.02.2012.

32. Article 43-B of the Constitution of India provides for the promotion of cooperative societies:

“43-B. Promotion of cooperative societies. —The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.”

33. Part IX-B of the Constitution of India is titled as “The Cooperative Societies” consisting of Article 243 ZH to 243 ZT. Article 243ZL enables the state legislature to make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning subject to part IXB of the Constitution of India and it also provides that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 shall also apply. Article 243-ZM deals with audit of accounts of co-operative societies and it provides that the Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year.

Article 243-ZT deals with continuance of existing laws. It provides that notwithstanding anything in Part IX-B of the Constitution of India any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of Part IX-B, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less. The Constitution (Ninety-seventh Amendment) Act, 2011 has come into force with effect from 15.02.2012.

34. It has been, *inter alia*, observed in the aforesaid judgement in the case of *Vipulbhai M. Chaudhary (supra)* that: -

- a. By 12.01.2013 all laws on cooperative societies were bound to be restructured in consonance with the 97th Amendment to the Constitution of India and, in any case, any provision in the Act or Rules or Bye-laws otherwise inconsistent with the Constitution will be inoperative thereafter. Articles 43-B and 243-ZT are mandates to all the States and the competent authorities to structure cooperative societies as conceived in the Constitution of India, if not already there.
- b. The cooperative societies having been conferred a constitutional status by the Ninety-seventh Amendment, the whole concept of cooperatives has undergone a major change. The main object for the said Amendment was also to ensure “their autonomy, democratic functioning and professional management”.
- c. Article 243-ZT of the Constitution requires the laws relating to cooperative societies in force in the States prior to the commencement of the Amendment Act to be in tune with and in terms of the constitutional concept and set-up of cooperative societies. In fact, a period of one year has been provided in the Constitution from the commencement of the Amendment for the required amendment or repeal by the competent legislature or by the competent authority, of laws which are inconsistent with Part IX-B. As a corollary, the Constitution enables the competent legislature or authority to suitably amend the existing provisions in their laws in tune with the constitutional mandate. Thereafter, in case there continues to be silence in the Act or bye-laws, the court will have to read the constitutional requirements into the existing provisions. It is essentially a process of purposive construction of the available provisions as held in the case of *“Pratap Chandra Mehta Vs. State Bar Council of Madhya Pradesh” reported in (2011) 9 SCC 573*.

35. One of the essential points which arise for consideration in this case is whether Rule 39 of the Rules of 1959 dealing with compulsory amalgamation of cooperative societies is contrary to the provisions of Constitution (Ninety-seventh Amendment) Act, 2011. In the present case, Rule 39 of the Rules of 1959 has been invoked after one year of coming into force of Constitution (Ninety-seventh Amendment) Act, 2011 and as per Article 243 ZT any provision of any law relating to cooperative societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of Part IX-B, shall continue to be in force until amended or repealed by a competent

Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less.

36. This Court finds that the Ninety-seventh Constitutional Amendment has made special provisions for the purposes of cooperative banks and supervision and control in the banking business of the cooperative banks as was prevalent in terms of Banking Regulation Act of 1949 has been retained and the State has been given the responsibility not only to promote voluntary formation, autonomous functioning and democratic control of cooperative societies, but also promote professional management of cooperative societies. In the field of banking business, the professional management of cooperative societies dealing with banking becomes all the more important and the cooperative societies are guided by Banking Regulation Act of 1949 as applicable. Moreover, the special provisions made under the Cooperative Societies Act of 1935 for cooperative banks read with Banking Regulation Act of 1949 are also in tune with the Ninety-seventh Constitutional Amendment which are not even under challenge in the present proceedings.

37. Chapter VI-B of *Jharkhand Cooperative Societies Act of 1935* as amended deals with “*Cooperative Banks*” and consists of Sections 44-AJ to Section 44-AO which are quoted as under:

Chapter VI-B

Cooperative Banks

“44-AJ. Application of the Chapter to Co-operative Banks. –

(1) The provisions of this Chapter shall apply to a Co-operative Bank as defined in the Deposit Insurance Corporation Act, 1961 (47 of 1961) in addition to the provisions contained in other parts of this Act, where any question of apparent or implied inconsistency arises, the provisions of this Chapter shall prevail over the provisions of the other parts of this Act.

(2) For the purposes of this Chapter, 'Deposit Insurance Corporation' means the Deposit Insurance Corporation established under the Deposit Insurance Corporation Act, 1961 (47 of 1961) and Reserve Bank means the Reserve Bank of India established under the Reserve Bank of India Act, 1934 (2 of 1934).

44-AK. Division, amalgamation, compromise, etc. – (1) No order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction or of division or transfer of assets and liabilities of a Co-operative Bank shall be made without the previous sanction in writing of the Reserve Bank.

(2) Where an order of moratorium has been made by the Central Government under sub-section (2) of Section 45 of the Banking Regulation Act, 1949 (10 of 1949) in respect of a Co-operative Bank, the Registrar, with the previous approval of the Reserve Bank in writing may during the period of moratorium, prepare a scheme,—

- (i) for the re-construction of the Co-operative Bank; or
- (ii) for its amalgamation with any other Co-operative Bank (herein referred to as the transferee Bank).

(3) Notwithstanding anything to the contrary contained in this Act where a Co-operative Bank being an insured bank within the meaning of the Deposit Insurance Corporation Act, 1961 (47 of 1961) is amalgamated or in respect of which a scheme of compromise or arrangement or of reconstruction has been sanctioned and the Deposit Insurance Corporation has become liable to pay to the depositors of the insured bank, under sub-section (2) of Section 16 of the Act, the bank with which such insured bank is amalgamated or, the new Co-operative Bank formed after such amalgamation or, as the case may be, the insured bank or the transferee bank shall be under an obligation to repay the Deposit Insurance Corporation in the circumstances, to the extent and in the manner referred to in Section 21 of that Act.

44-AL. Supersession of Managing Committee of Co-operative Bank – Notwithstanding anything contrary contained in this Act, Registrar shall if so required in writing by the Reserve Bank in public interest or for preventing the affairs of the Co-operative Bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the Co-operative Bank; pass an order for the supersession of the Managing Committee or other managing body (by whatever name called) of that Co-operative Bank and appointment of an administrator therefor, upon such terms and for such periods not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank.

44-AM. Reserve Bank's sanction or requisition for winding up order. – (1) Notwithstanding anything to the contrary contained in this Act, no Co-operative Bank shall be wound up except with the previous sanction in writing of the Reserve Bank.

(2) Notwithstanding anything to the contrary contained in this Act, the Registrar shall make an order for the winding up of a Co-operative Bank if so required by the Reserve Bank in the circumstances mentioned in Section 13D of the Deposit Insurance Corporation Act, 1961 (47 of 1961.)

44-AN. Reimbursement to Deposit Insurance Corporation. – Where a Co-operative Bank, being an insured bank within the meaning of Deposit Insurance Corporation Act, 1961 (47 of 1961) is wound up or is taken into liquidation and the Deposit Insurance Corporation has become liable to pay to the depositors of the insured bank under sub-section (1) of Section 16 of that Act, the Deposit Insurance Corporation shall be reimbursed in the circumstances to the extent and in the manner provided in Section 21 of that Act.

44-AO. Finality of the Reserve Bank's sanction 'or' requisition.- Notwithstanding anything to the contrary contained in this Act where with the previous sanction in writing or on the requisition of the Reserve Bank-

- (i) an order for the winding up of the Co-operative Bank is made, or
- (ii) in respect of which a scheme of compromise or arrangement or of reconstruction or amalgamation is made, or

(iii) in respect of which an order for the supersession of its Managing Committee or other managing body (by whatever name called) and the appointment of an administrator therefor has been made, no appeal or revision or review there against shall lie or be permissible and such sanction or requisition of the Reserve Bank shall not be liable to be called in question in any manner.”

38. Rule 38 and 39 of the Jharkhand Co-operative Societies Rules, 1959 deal with voluntary amalgamation of societies and compulsory amalgamation of societies respectively. The said provisions are quoted as under:

38. Voluntary amalgamation of societies.- (1) Any two or more registered societies may, at a general meeting of each society held for the purpose, of which at least seven days' notice has been given to their respective members, resolve to amalgamate as a new society.

(2) A copy of the resolution of each society passed under sub-rule (1) and hereinafter in this rule referred to as the preliminary resolution shall be sent to all the members and creditors thereof.

(3) Any member, and such society may, notwithstanding any bye-law to the contrary, be given to the society of which he is a member within a period of one month from the receipt of the preliminary resolution, intimate his intention not to become a member of the new society.

(4) Any creditor of any such society may, notwithstanding any agreement to the contrary, by notice given to the society of which he is creditor within the said period, intimate his intention to demand a return of the amount due to him.

(5) After the expiry of one month from the receipt of the preliminary resolution by all the members and creditors of all the societies, a joint meeting of the members of such societies of which at least fifteen days' notice shall be given to them, shall be convened for considering the preliminary resolution. If at such meeting, the preliminary resolution is confirmed by a resolution passed by a majority of the members present, either without changes or with such changes as in the opinion of the Registrar are not material, he may subject to the provision of sub-rule (8) of Rule 55 and Rule 4, register the new society and the bye-laws thereof, and, on such registration, the registration of the old societies shall be deemed to have been cancelled.

(6) The opinion of the Registrar as to whether the changes made in preliminary resolution are or are not material shall be final.

(7) At the joint meeting referred to in sub-rule (5), provision shall be made by another resolution for-

(i) the payment of the share capital of all the members who have given notice under sub-rule (3); and

(ii) the satisfaction of the claims of all the creditors who have given notice under sub-rule (4):

Provided that no member or creditor shall be entitled to such payment on satisfaction of the claim until the preliminary resolution is confirmed as provided in sub-rule (5).

(8) *If within such time as Registrar considers reasonable, the share capital of the members referred to in sub-rule (7) is not repaid or the claims of the creditors referred to therein are not satisfied, the Registrar may refuse to register the new society.*

(9) *On the registration of the new society, the assets and liabilities of the amalgamated societies shall vest in the new society.*

39. Compulsory amalgamation of societies. - (1) *If the Registrar is satisfied, after taking into consideration the financial position of two or more societies and such other matters relating to the societies as may be proper, that it is in the interest of those societies to be amalgamated into a new society, he may, by order in writing, require the managing committees of societies concerned to convene, general meetings of the share-holders and creditors thereof within six weeks from the date of the order, for the purpose of considering a proposal to amalgamate the societies into a new society.*

(2) *If the Managing Committees fail to call any such meeting for the purpose, or if the decision in any such meeting is against the proposed amalgamation, or no decision is taken at any such meeting the Registrar may on the expiry of six weeks from the date of his order and after satisfying himself that the interest of the creditors has been adequately safeguarded direct that the said societies shall be amalgamated into a new society with effect from a date to be specified in the direction.*

(3) *The Registrar shall, with effect from the said date, register the new society and on such registration the assets and liabilities of the amalgamated societies shall vest in the new society.*

(4) *An appeal against an order passed under sub-rule (1) shall lie, within one month from the date of such order, -*

(i) *if the order has been passed by any officer exercising the powers of the Registrar, to Registrar;*

(ii) *if the order has been passed by the Registrar, to the State Government.*

(5) *No action under sub-rule (2) shall be taken until the disposal of the appeal under sub-rule (4).*

39. The Chapter VI-B of the Act of 1935 dealing with co-operative banks has a specific provision that a scheme for amalgamation cannot be sanctioned without the previous sanction in writing of Reserve Bank of India and thus amalgamation of cooperative banks is contemplated and also permissible under Chapter VI-B. As held above, Part IX-B of the Constitution of India enables the state legislature to make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning subject to Part IX-B of the Constitution of

India and it also provides that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 shall also apply. Thus, the control and supervision of RBI over cooperative banks in terms of provisions of Banking Regulation Act, 1949 has not been disturbed by 97th Constitutional Amendment Act, 2011 whose main object was not only to ensure autonomy and democratic functioning of the cooperative societies but also their professional management and it was expected to ensure the accountability of management to the members and other stakeholders and also to provide for deterrence for violation of the provisions of the law.

40. Rule – 38 of the Rules of 1959 deals with voluntary amalgamation of societies and Rule – 39 deals with compulsory amalgamation of societies and there is no exception with regard to its applicability to co-operative banks who are governed by the Jharkhand Co-operative Societies Act, 1935 and the rules framed thereunder.

41. Chapter-VI-B of the Jharkhand Cooperative Societies Act of 1935 also does not exclude applicability of Rule 38 and 39 to the cooperative banks and there is no inconsistency amongst the aforesaid provisions *vis-a-vis* 97th constitutional amendment which also permits the State legislature to make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning subject to part IX-B of the Constitution of India and with particular reference to a co-operative society carrying on the business of banking, it has been provided that the provisions of the Banking Regulation Act, 1949 will be applicable.

42. The position becomes all the more clear when considered with Chapter-VI-B of the Jharkhand Cooperative Societies Act of 1935 as amended. Section 44-AK clearly provides that no order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction or of division or transfer of assets and liabilities of a

Cooperative Bank shall be made without the previous sanction in writing of the Reserve Bank. Upon reading of Chapter-VI-B of the Jharkhand Cooperative Societies Act of 1935, this Court finds that amalgamation of cooperative banks is permissible under the Jharkhand Cooperative Societies Act of 1935 as is permissible for other co-operative societies but with a condition of obtaining previous sanction of RBI in terms of Section 44-AK of Jharkhand Cooperative Societies Act of 1935.

43. This Court finds that even the matters of voluntary amalgamation of cooperative banks under Rule 38 of the Rules of 1959 require previous sanction of the RBI and such amalgamation also requires close scrutiny of the financial conditions of the cooperative banks by RBI and the financial impact upon such amalgamation as has been done in the present case while granting the final approval for amalgamation of seven district central co-operative banks and thus, even voluntary amalgamation is not a matter of right of the co-operative banks or the State Government.

44. This Court finds that as per provision of compulsory amalgamation under Rule – 39 of the Rules of 1959, the proposal has to be preceded by the satisfaction of the Registrar, Cooperative Societies who has to take into consideration the financial position of the concerned societies and also the interest of those societies to be amalgamated into a new society and only after being satisfied to the aforesaid aspects of the matter, Registrar, Cooperative Societies can ask the managing committees of the concerned societies to convene a meeting of shareholders and creditors for the purpose of considering a proposal to compulsorily amalgamate the societies into a new society. Rule 39 further provides that even if the decision in such meeting is against such proposed compulsory amalgamation or no decision is taken within stipulated time, the Registrar, Cooperative Societies is further required to satisfy himself that the interest of the creditors has been adequately safeguarded and then direct that the concerned societies be amalgamated into a new society with effect from the date

to be specified in the direction. This provision of Rule – 39 when read with the provision of Section 44-AK of the Act of 1935 is coupled with further safeguard by the requirement of previous sanction in writing of the Reserve Bank when it is made applicable to cooperative banks.

45. Vide 97th Constitutional Amendment Act of the Constitution of India, Part IX-B has been introduced dealing with co-operative societies and Section 43-B has been introduced in Part – IV of the Constitution of India dealing with the Directive Principles of State Policy and by this, specific provision has been made for promotion of co-operative societies and it has been provided that the State shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. Article 243ZL clearly provides that in case of a co-operative society carrying on business of banking, the provisions of the Banking Regulation Act, 1949 shall also apply. This Court finds that the provisions of Section 44-AK of Jharkhand Co-operative Societies Act, 1935 is in consonance with the provisions of Part IX-B of the Constitution of India dealing with co-operative societies read with Section 43-B of the Directive Principles of State Policy. This Court is of the considered view that the amalgamation of the co-operative banks is safeguarded by the provisions of Section 44-AK of Chapter VI-B of the Act of 1935 and by no stretch of imagination, it can be said that the same has any adverse impact with regard to autonomy of functioning of the co-operative societies. In view of the aforesaid findings, this Court is of the considered view that Rule – 39 of the Rules of 1959, dealing with compulsory amalgamation of cooperative societies is applicable also for the co-operative banks and its application is not limited to amalgamation of non-banking co-operative societies, as such, PACS (Primary Agriculture Credit Societies) and LAMPS (Large Area Multi Purposes Societies).

46. “Short Term Co-operative Credit Structure Society” has been defined under Section 2(s) of Jharkhand Co-operative Societies Act, 1935 to mean and include the ‘State Co-operative Bank’, ‘Central co-

operative bank' and 'Primary Agriculture Credit Societies' by whatever name they may be called. 'State Co-operative Bank' and 'Central Co-operative Bank' are governed by Chapter VI-B constituting of Sections 44AJ to 44 AQ. Sections 44-AT to 44-AV has special provision applicable to 'short term co-operation credit structure' and it provides for autonomy to 'short term co-operation credit structure' by virtue of Section 44-AV(2) in as much as they have freedom to decide their financial and internal administrative matters especially relating to the matters mentioned therein. This Court is of the considered view that the action of the respondent-State and RBI relating to amalgamation of the respondent Dhanbad Central Co-operative Bank is not an action interfering with its autonomy so far as it relates to the matters mentioned in Section 44-AV (2). Accordingly, the arguments of the learned Senior counsel for the petitioners relying upon Section 44-AV (2) to submit that the respondent-State has no jurisdiction to take away the autonomy of the respondent Dhanbad Central Co-operative Bank by resorting to compulsory amalgamation under Rule 39 of the Rules of 1959, is devoid of any merits.

47. Thus, Issue nos. (c) and (e) are answered as follows: -

- a. Provision of compulsory amalgamation of Cooperative Banks in terms of Rule 39 is not contrary to the provisions of 97th Constitutional Amendment whereby Section 43B and Part IX B have been inserted in the Constitution of India with respect to cooperative societies.*
- b. Rule 39 of the Rules of 1959 dealing with compulsory amalgamation of societies is applicable for the purposes of amalgamation of cooperative banks and its application is not limited to amalgamation of non-banking cooperative societies such as PACS (Primary Agricultural Credit Societies) and LAMPS (Large Area Multi-Purpose Societies).*

Issue no.(d)

48. Though Section 44-A of the Banking Regulation Act, 1949 deals with the procedure for amalgamation of banking companies but a specific stand has been taken by the respondent RBI in their counter affidavit that certain provisions of the Banking Regulation Act, 1949 particularly incorporation, amalgamation and winding up have not been

made applicable to co-operative banks. Thus, the provision of amalgamation of co-operative banks like the respondent co-operative bank is to be governed by the provisions of Jharkhand Co-operative Societies Act, 1935 subject to Chapter VI-B and in particular Section 44-AK of the Jharkhand Cooperative Societies Act, 1935 provided they are not inconsistent with 97th Constitutional Amendment Act, 2011.

49. Section 6 of the Banking Regulation Act, 1949 deals with forms of business in which banking companies may engage and Section 56 of the Banking Regulation Act of 1949 reveal that in clause (d) of sub-section (1) of Section 6 after the word '*company*' the words '*co-operative society*' have been inserted to make Section 6 applicable to co-operative society engaged in business of banking ; similarly, Section 46 of the Banking Regulation Act, 1949 deals with penalties and Section 56 of the Banking Regulation Act of 1949 reveals that in clause (a) of explanation to the Section 46, '*co-operative society*' has been specifically inserted to make the said provision applicable to '*co-operative society*'. Thus, all the provisions of Banking Regulation Act, 1949 have not been made applicable to co-operative societies engaged in business of banking but the provisions of the said Act of 1949 have been made applicable only to the extent mentioned in Section 56 of the Banking Regulation Act, 1949. So far as Section 44-A of Banking Regulation Act, 1949 dealing with 'procedure for amalgamation of banking companies' is concerned, the same has not been made applicable to '*co-operative society*'. It is also important to note that Section 56 of Banking Regulation Act, 1949 while extending the applicability of Banking Regulation Act, 1949 to cooperative banks does not exclude applicability of Cooperative Societies Act to the cooperative banks under which they have been incorporated. Thus, the provisions of amalgamation as contemplated under Rule 38 and 39 of the Rules of 1959, are fully applicable.

50. The matter of amalgamation under the provision of Rule 39 of Rules of 1959 also does not override the provision of Section 44 of Jharkhand Cooperative Societies Act, 1935 which deals with liquidation and dissolution of the registered societies and it comes into

play when the Registrar has passed an order for winding up of a registered society. Amalgamation of cooperative banks is different from winding up leading to liquidation and dissolution. Steps for amalgamation of co-operative banks have to be taken in terms of section 44 AK under the Act of 1935 made applicable to co-operative banks read with provisions of amalgamation through Rule 38 of the Rules of 1959 in case of voluntary amalgamation and Rule 39 of the Rules of 1959 in case of compulsory amalgamation which also requires prior sanction of RBI.

Thus, Issue no.(d) is answered as follows:-

In the matter of amalgamation of cooperative banks, the provision of Rule 39 of Rules of 1959 does not override the provisions of section 44 of Jharkhand Cooperative Societies Act, 1935 and section 44A of Banking Regulation Act, 1949.

Issue No.(f)

51. It is required to be considered as to whether decision making process while issuing Annexure-3 to the writ petition for compulsory amalgamation of respondent Dhanbad Central Cooperative Bank with Jharkhand State Co-operative Bank under Rule 39 of Rules of 1959 is sustainable in law.

52. In the present case, the decision of the Government to have two-tier system of cooperative societies instead of three-tier system was taken as back as on 08.10.2002 which was followed by in-principle approval of the RBI vide letter dated 11.10.2013 and one of the conditions of approval was that the due process as required under the provisions of Jharkhand State Cooperative Societies Act and Jharkhand Cooperative Societies Rules (Rule 38) as adopted by the State of Jharkhand should be followed. Another condition was that a consolidated balance-sheet and profit and loss account after merger of Central Cooperative Banks with Jharkhand State Cooperative Bank was also to be prepared and at every stage the provision of Jharkhand State Cooperative Societies Act, must be complied.

53. There was considerable gap in time between the decision of the State Government on 08.10.2002 and the in-principle approval granted by the RBI vide letter dated 11.10.2013 as the bank with which the Central Cooperative Banks of the State of Jharkhand were to be merged was Jharkhand State Cooperative Bank for the State which became functional only from 01.09.2012 after completing the required formalities. After the decision dated 08.10.2002, important development in terms of constitutional amendment had taken place, inasmuch as, the 97th constitutional amendment with regard to insertion of Section 43B in Directive Principles of State Policy and induction of Part IX-B on cooperative societies came into effect from 15.02.2012.

54. It is important to note that the RBI had given in-principle approval of amalgamation of 08 District Central Cooperative Banks of the State of Jharkhand by specifically referring to Rule 38 of Jharkhand State Cooperative Rules which deals with voluntarily amalgamation which in turn takes place with the consent of the respective cooperative societies. Such exercise of decision to amalgamate in terms of Rule 38 of the Rules of 1959 is based on democratic principles and autonomy of the concerned Cooperative Societies.

55. As a sequel to the in-principle approval granted by the RBI by specific reference to Rule 38 of the Rules, 07 out of 08 District Central Cooperative Banks unanimously agreed for their amalgamation with Jharkhand State Cooperative Bank and so far as the respondent-Dhanbad Central Cooperative Bank is concerned, the proposal was declined vide meeting dated 24.11.2013. Immediately after refusal to agree for voluntary amalgamation in terms of Rule 38 by respondent Dhanbad Central Cooperative Bank, the respondent No. 2 issued letter dated 02.12.2013 by invoking Rule 39 of the Rules of 1959 for considering the proposal of compulsory amalgamation.

56. This Court is of the considered view that after the respondent-Dhanbad Central Cooperative Bank had refused for voluntary amalgamation in terms of Rule 38 of the Rules of 1959 and before exercise of power under Rule 39 of the Rules of 1959 for compulsory

amalgamation , the respondent no. 2 was under an obligation to take into consideration the financial position of two banks i.e. the Dhanbad Central Cooperative Bank and also that of Jharkhand State Cooperative Bank and also such other matters relating to the two banks as may be found proper considering the interest of both the banks to be amalgamated and such exercise has been contemplated under Rule 39 itself.

57. This Court is of the considered view that after failure of attempt of voluntary amalgamation of the respondent-Dhanbad Central Cooperative Bank in terms of Rule 38 for which in-principle approval was granted by RBI the steps for compulsory amalgamation in terms of Rule 39 could be taken only after ascertaining the financial position of the respondent Dhanbad Central Cooperative Bank. There is nothing to show that any such exercise was undertaken by the respondent no. 2 before asking the Dhanbad Central Cooperative Bank to take steps for compulsory amalgamation with Jharkhand State Co-operative Bank.

58. This Court is of the considered view that the scope of voluntary amalgamation under Rule 38 of the Rules of 1959 and that of compulsory amalgamation of societies in terms of Rule 39 are totally different and it becomes all the more important when such proposal for compulsory amalgamation under Rule 39 of the Rules of 1959 is invoked after coming into force of the 97th Constitutional Amendment. The question of compulsory amalgamation of cooperative banks like the respondent bank under Rule 39 of the Rules of 1959 can only arise under the circumstances when any step against their autonomy is required to be taken to ensure accountability in connection with the professional management /management of the concerned cooperative bank and to ensure that it functions in economically sound manner in the matter of banking and other connected matters. The refusal to give consent for voluntary amalgamation by the respondent cooperative bank in terms of Rule 38 of the Rules of 1959 will not automatically empower the Registrar of the Cooperative Societies to invoke Rule 39

of the Rules of 1959 without taking steps with regard to consideration of financial position etc. in terms of Rule 39 of the Rules of 1959.

59. This Court is of the considered view that consent of the Reserve Bank of India for voluntary amalgamation of societies in terms of Rule 38 of the Rules of 1959 is different from the consent of Reserve Bank of India for compulsory amalgamation of societies under Rule 39 of the Rules of 1959. The consent which has been given for the purposes of amalgamation under Rule 38 of the Rules of 1959 cannot be taken to be a consent for the purposes of Rule 39 of the Rules of 1959 unless the financial position of Jharkhand State Cooperative Society and Dhanbad Central Cooperative Society are placed before the Reserve Bank of India for consideration.

60. This Court finds that after rejection of proposal for voluntary amalgamation by Dhanbad Central Cooperative Bank on 24.11.2013, the respondent no.2 has mechanically invoked Rule 39 of the Rules of 1959 for compulsory amalgamation without undertaking the requisite exercise as contemplated in Rule 39 of the Rules of 1959 itself. Further, the proposal for compulsory amalgamation was required to be again placed before the Reserve Bank of India as Reserve Bank of India had granted in-principle approval only by referring to Rule 38 of the Rules of 1959 which relates to voluntary amalgamation. **Thus issue no.(f) is answered as follows: -**

The decision of compulsory amalgamation of Dhanbad Central Cooperative Bank with Jharkhand State Cooperative Bank in terms of Rule 39 of the Rules of 1959 has not been taken in accordance with law.

61. In view of the aforesaid findings, the impugned Memo No.3146/Ranchi dated 02.12.2013 (Annexure – 3) issued by respondent no.2 directing the Dhanbad Central Cooperative Bank to again convene a meeting of its shareholders by invoking Rule 39 of the Rules of 1959 for consideration of proposal of compulsory amalgamation cannot be sustained in the eyes of law for having not fulfilled the pre-requisite exercise in terms of Rule 39 of the Rules of 1959 and also in the absence of prior sanction from RBI in terms of

Section 44AK for compulsory amalgamation of Dhanbad Central Cooperative Bank with Jharkhand State Cooperative Bank. The impugned order and action have been quashed on account of procedural irregularity and accordingly it will be open to the respondent-State as well as Reserve Bank of India to take fresh steps in accordance with law.

62. This writ petition is disposed of in the aforesaid terms.

63. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

Pankaj/AFR