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to various persons on the basis of the said FDRs. On A
maturity of the FDRs, the investors sought its
encashment, but the banks declined stating that the
amounts under the FDRs had already been paid by way
of loans and no further amount was payable. It was stated
that a fraud on the banks was practised to which the de- B
positors and the officers of the Banks were parties. In the
writ petitions filed by the depositors, though the High
Court opined that serious disputed questions of fact be-
ing involved in the writ petition no relief could be granted
to the writ petitioners, it, however, relying upon the provi- C
sions of s.35A of the Banking Regulations Act, 1949, di-
rected a Committee to be constituted under the Chairman-
ship of the Deputy Governor of the Reserve Bank of India
or his nominee to go into the matter in greater details. The
Committee submitted its report stating that principally of- D
ficers of the Banks were involved in the scam. The High
Court, accordingly, opined that the writ petitioners were
not parties to the fraud and as such subject to any orders
that might be passed in the criminal case, the Banks
should pay the amounts under the FDRs to the deposi- E
tors.

In the Instant appeals filed by the Banks it was con-
tended for the appellants that in a writ petition involving
private dispute, no direction for payment of money in
favour of the writ petitioners should have been issued by F
the High Court; that as the writ petitions involved serious
disputed questions of fact, the High Court should not have
entertained the same; and that the Central Bureau of In-
vestigation having submitted a charge-sheet wherein not
only the officers of the banks but also the commission G
agents were found to be guilty of conspiracy in commit-
ting fraud on the banks, the judgment and direction of
the High Court should be set aside.

Partly allowing the appeals, the Court

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A HELD: 1.1 The propositions of law which are undisputed are : (i) writ petitions against the banks being 'State' within the meaning of Article 12 of the Constitution of India were maintainable; (ii) writ petitions involving serious disputed questions of fact, ordinarily should not be entertained although the High Court in some cases may enter into disputed questions of fact. [Para 10] [459-A,B]

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D 1.2 A writ petition indisputably would be maintainable even in relation to a matter arising out of contract qua contract. Some cases may start on a private interest but if the court finds involvement of a public law element therein concerning a large number of people, the writ court may proceed on the basis as if it was public interest litigation and appoint a Committee and then grant relief in favour of the writ petitioners. It may be that in appropriate cases, the court may find the recommendations made by the Committee acceptable. But in the instant case, it is not a public interest litigation in that sense of the term. [para 11-12 and 17-18] [462-B,C, 473-B]

E *Guruvayoor Devaswom Managing Committee & anr. vs. C.K. Rajan & Ors. (2003) 7 SCC 546; Ashok Lanka & anr. vs. Rishi Dixit & Ors. (2005) 5 SCC 598; and Krishna Swami v. Union of India and another with Raj Kanwar v. Union of India and Another (1992) 4 SCC 605 – referred to.*

F "The Role of the Judge in Public Law Litigation" by Abram Chayes, Harv. Law. Rev. Vol. 89 (1976) Pg. 1281 – referred to.

G 1.3 A writ court exercising the power of judicial review has a limited jurisdiction. Indisputably, exercise of jurisdiction by the High Court is permissible in a case where action of the State is found to be unfair, unreasonable or arbitrary. The question which should have been posed by the High Court was as to whether the action of the bank was so arbitrary so as to invoke the public law jurisdiction. If the answer to the said question was to be

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in the negative, the High Court should have refused to exercise its jurisdiction. [para 16] [470-A,B] A

M/s Hyderabad Commercials vs. Indian Bank & Ors. 1991 Supp. (2) SCC 340 - held inapplicable.

LIC of India & anr. vs. Consumer Education & Research Centre & ors., (1995) 5 SCC 482; *Sanjana M. Wig (Ms) vs. Hindustan Petroleum Corpn. Ltd.* (2005) 8 SCC 242; *ABL International Ltd & Anr. vs. Export Credit Guarantee Corporation of India Ltd & Ors.* (2004) 3 SCC 553; and *The D.F.O, South Kheri & ors. vs. Ram Sanehi Singh* (1971) 3 SCC 864 – referred to. B C

2.1 Although the Public Sector Banks having regard to the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 should discharge their functions keeping in mind the larger public interest but ordinarily in the matter of enforcement of contract, they are to be governed by the terms thereof, which would not be amenable to writ jurisdiction of the High Court unless the actions of the banks are found to be wholly arbitrary and unreasonable. [para 10] [459-F,G] D E

2.2 A fraud has been practiced on the banks. Primary accused may be the bank officers but a conspiracy with them by the outsiders has also been alleged. The question as to whether fraud has been committed by the officers of the bank is pending consideration before a competent criminal court. There are other various disputed questions which are required to be gone into in the said proceedings. The role played by some of the writ petitioners-respondents is also in issue. Such seriously disputed questions of fact could not have been gone into by the writ court. [para 16-17] [470-C, 471-B,C] F G

3.1 Indisputably, whether as public sector undertakings or otherwise, the banks cannot refuse to accede to the just demand of the investors to pay any amount law- H

- A fully due to them *inter alia* on the premise that their officers are guilty of commission of any fraud. In given cases, the employers are constructively liable for acts of negligence on the part of their employees. For the purpose of this case, the Banks would be assumed to be constructively liable for acts of their employees and, therefore, are liable to pay the amount under the contract for which the FDRs were issued. [Para 10] [460-C,E, 461-F]

- C *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co Ltd.* [1915] AC 705 HL; *Meridian Global Funds Management Asia Ltd. v. Securities Commission* [1995] 2 AC 500=[1995] 3 All ER 918 – referred to.

Farrar's Company Law, 4th Edn. Page 147 – referred to.

- D 3.2 The cooperative societies/cooperative banks for the purpose of their day-to-day functioning require the amount which they have invested in FDRs on their maturity. The appellant Banks being 'State' within the meaning of Article 12 of the Constitution of India with the assistance of officers of the Central Bureau of Investigation should make all attempts to ascertain as to which of the cooperative societies/cooperative banks are in no way involved with the scam, and subject to such precautions as may be found necessary to be taken, release the amount in their favour. [Para 19 and 20] [473-E,F,G, 474-A]

- F 3.3 In the event, the cooperative society intending to avail loan facilities for running their business, approach the banks, the latter may apart from usual conditions, stipulate a further condition that the amount of FDR would remain with them and on that basis, loans may be granted of such amount. The usual precautions in regard thereto may also be taken by the Banks. These directions are issued keeping in view the factual scenario obtaining in the case and that non-release of the amount is likely to ensure hardships that may be faced by the cooperative societies. These directions should not be treated to be pre-
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cedent. [para 22-23] [474-D,E,F]

A

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3303
of 2005

From the Judgment and final Order dated 1/10/2003 of
the High Court of Gujarat at Ahmedabad in I.P.A. No. 258 of
2000

B

WITH

C.A. Nos. 3336, 3337, 3338 and 3304-3305 of 2005

P.P. Rao, Ajay Kr. Mishra, Pramod B. Agarwala, Praveena
Gautam, Darshan Parikh, Nitin Kant Setia, Himanshu Munshi,
N.R. Parikh, Rajesh Kr. Chaurasia and Vikram for the Appel-
lant.

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C.A. Sundaram, B.S. Patel, Aniruddha P. Mayee, Rucha
Maysee, K.S. Rathod, Abhishek Gupta, Shabu Sreedharan,
B.V. Balaram Das, V. Shekhar, S. Wasim A. Qadri and Gaurav
Agarwal for the Respondents.

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The Judgment of the Court was delivered by

S.B. SINHA, J. 1. These appeals involve an interesting
question as regards the power of judicial review of a Superior
Court.

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2. Respondents herein are cooperative societies regis-
tered under the Cooperative Societies Act and/or their Mem-
bers.

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They deposited certain amounts in cash in fixed deposits
of Banks wherefor Fixed Deposit Receipts (FDRs) were to be
issued. Such deposits were made through some so-called Com-
mission Agents of the Banks on payment of huge commission
which is ordinarily not allowed by the Nationalized Banks.

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3. Applications for grant of loans by various persons were
filed before the prescribed authorities of the banks on the basis
of the said FDRs. Allegedly a large number of officers of the

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A banks were involved in a scam whereby unofficial investments of the said amount were being made.

B 4. As and when the FDRs matured, the investors requested the Banks for their encashment. The banks refused to accede thereto stating that the amount under the FDRs had already been paid by way of loans and, thus, no further amount was payable. It was contended that a fraud on the banks has been practiced to which the depositors and the officers of the banks were parties.

C 5. Writ petitions were filed. A learned Single Judge of the High Court opined that serious disputed questions of fact being involved in the said writ petitions, no relief can be granted to the writ petitioners.

D 6. Despite the same, the learned single judge relying on the provisions contained in Section 35A of the Banking Regulations Act, 1949 directed constitution of a Committee under the Chairmanship of the Deputy Governor of Reserve Bank of India or his nominee to go into the matter in great details. Various powers were delegated in favour of the Committee including the one that the decision of the Committee shall be final and binding upon the parties.

F A Division Bench of the said Court in an intra court appeal preferred thereagainst, however, stayed only the operation of some of the clauses of the said order. The Committee, however, was allowed to function.

A special leave petition filed thereagainst has been dismissed by this Court with certain observations.

G 7. The Committee submitted its report. It was found that principally the officers of the banks were involved in the matter of commission of the alleged fraud on the Banks.

H Members of the Committee, however, differed in their opinion as to whether, having regard to the limited scope of the enquiry, any positive direction could be issued.

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8. Relying on and/or on the basis of the report of the Committee, the Division Bench of the High Court opined that as the writ petitioners were not parties to the fraud, subject to any other or further orders that may be passed in the criminal case, appellant-banks should be directed to pay the amounts under the FDRs to the depositors.

9. Appellants are, therefore, before us.

On 5th April 2004, a limited notice was issued by this Court, which is to the following effect:-

"Issue notice on the special leave petition limited to the question as to whether the High Court should have directed payment having regard to the fact that the Committee itself had not finally resolved the question of liability as far as the disputed amount was concerned.

Issue notice on the prayer for interim relief also."

This Court in its order dated 10th December, 2004 explained the said order stating :-

"The issue which is now required to be resolved is a narrow one viz. whether the Committee had finally decided that the amounts payable by the Bank (a) were the liability of the Bank and (b) if so, what was the quantum if any, payable by the Bank to the deposits. Learned counsel appearing on behalf of the respondent prays for time till after the vacation.

Let the matter appear two weeks after reopening on a miscellaneous day.

There will be interim order staying the operation of the impugned order."

However, by an order dated 9th May, 2005, upon hearing the counsel for the parties, 'Leave' was granted, as a result whereof all the contentions of the parties are now open.

10. Mr. P.P. Rao, learned Senior Counsel appearing on

A behalf of Bank of Baroda would submit :-

(i) In a writ petition involving private dispute, no direction for payment of money in favour of the writ petitioners should have been issued by the High Court;

B (ii) As the writ petitions involved serious disputed questions of fact, the High Court should not have entertained the same;

C (iii) Having regard to the fact that the Central Bureau of Investigation has since submitted a charge-sheet wherein not only the officers of the banks but also the commission agents have been found to be guilty of an offence of conspiracy in committing fraud on the bank, the judgment and direction of the High Court should be set aside.

D Mr. Sundaram, learned Senior Counsel, appearing on behalf of the respondents, on the other hand, would contend:

E (a) Although the writ petitions were filed for enforcement of a contract, as the same involved public law character, the writ petitions were maintainable.

(b) Appellants being 'State' within the meaning of Article 12 of the Constitution of India, they were amenable to writ jurisdiction of the High Court.

F (c) The writ petitions having not been dismissed in time, the High Court was entitled to go into the merit of the matter for the purpose of arriving at a finding as to whether any case has been made out for issuance of any writ, direction or order.

G (d) In a case of this nature the High Court is entitled to convert a private dispute into a public interest litigation, the same having a public ramification by appointing a Committee and act thereupon, as a consequence whereof, relief in favour of the writ petitioners/respondents could be granted.

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The propositions of law which are undisputed are:-

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- i) Writ Petitions against the banks being 'State' within the meaning of Article 12 of the Constitution of India were maintainable;
- ii) Writ Petitions involving serious disputed questions of fact, ordinarily should not be entertained although the High Court in some cases may enter into disputed questions of fact.

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The question, however, is as to whether the learned Single Judge, despite holding that the writ petitions were not maintainable, could have issued direction for constitution of the Committee.

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The powers and functions delegated to the Committee were wide, by reason whereof for all intent and purport, even judicial power were delegated.

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Let us now consider the question as to whether direction to constitute such a Committee was legally permissible. Indisputably, the authorities of the Reserve Bank of India in exercise of their statutory powers conferred upon them under Section 35A of the Banking Regulation Act could issue directions for initiating an enquiry into the affairs of the Banks. The Banks being public sector undertakings could themselves do so and have in fact done so.

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It is one thing to say that the Public Sector Banks having regard to the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 should discharge their functions keeping in mind the larger public interest but ordinarily in the matter of enforcement of contract, they are to be governed by the terms thereof, which would not be amenable to writ jurisdiction of the High Court unless the actions of the banks are found to be wholly arbitrary and unreasonable.

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The core question which arises for consideration in the writ petitions was as to whether, keeping in view the apprehen-

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- A sion in the mind of the Bank that it has been subjected to fraud by its own officers as also the apprehension in their mind that the writ petitioners or their agents might have conspired with the offices of the Banks, was it unfair and unreasonable in its decision to refuse to make payment? The answer to that question prima facie must be rendered in the negative. If, however, it is found as of fact that the writ petitioners-respondents were not parties to the fraud, whether even in a lis involving private law domain, namely, contract qua contract, as a trustee of the investors' money, they may be held to be liable to refund the amount, is the question?
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Indisputably, whether as public sector undertakings or otherwise the banks cannot refuse to accede to the just demand of the investors to pay any amount lawfully due to them inter alia on the premise that their officers are guilty of commission of any fraud.

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It is one thing to say that fraud has been committed by their officers to cause wrongful loss to the bank but it is another thing to say that the banks are constructively liable for the acts of their officers.

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In given cases, the employers are constructively liable for acts of negligence on the part of their employees.

- F The Alter Ego approach adopted in the theory of Corporate liability which has been applied by the House of Lords in *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co Ltd* [1915] AC 705 HL is one such instance. The facts of the case concerned a cargo claim which Lennards sought to defend by contending that Section 502 of the Merchant Shipping Act 2894 exonerated the owner from losses arising without his actual fault.
- G The House of Lords held that they could not rely on that defence since the fault of the appropriate organ such as the Board of Directors or managing Director could be attributed to the company.

- H In Farrar's Company Law, 4th Edn. Page 147, it is stated:

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“An employee who acts for the company in the course of his or her employment will usually bind the company and his or her knowledge will be attributed to the company because he or she is the company for the purpose of the transaction in question.

This is so even if the employee is acting dishonestly or against the interests of the company or contrary to orders but it is not so where the company is the victim. This is to avoid an obvious contradiction.”

Another instance of the application of the theory of Corporate Liability is the ‘Attribution Approach’ as adopted by the Judicial Committee of the Privy Council in *Meridian Global Funds Management Asia Ltd. v. Securities Commission* [1995] 2 AC 500, [1995] 3 All ER 918.

In that case, two employees of Meridian, had improperly used their authority to purchase in the name of the company a substantial interest in Euro-National Corp. Ltd., a New Zealand listed company. Under the New Zealand Securities Amendment Act 1988, Meridian was required to give notice of its acquisition to ENC and the Stock exchange. The two employees knew this but the Board and the managing Director of Meridian did not. No notice was given. The Privy Council upheld the New Zealand Court’s decision holding that Meridian had contravened the law, on the premise that the knowledge of the employee would be attributed to Meridian.

We will, thus, assume for the purpose of this case that the Banks are constructively liable for acts of their employees. We will also assume that the Banks are liable to pay the amount under the contract for which the FDRs were issued.

11. The main question, however, would still remain as to whether in a case of this nature (which would in turn depend on the finding of fact) as to whether the petitioners themselves or their agents being party to the fraud, any direction in the public law domain can be issued. The larger question would be as to

A whether the writ petitions having not been found to be maintainable being purely of private law character, the High Court could treat it to be one involving a public law domain and could still have private law remedy available to the writ petitioners?

B A writ petition indisputably would be maintainable even in relation to a matter arising out of contract qua contract.

C 12. As has been submitted by Mr. Sundaram that some cases may start on a private interest but if the court finds involvement of a public law element therein concerning a large number of people, it may proceed on the basis as if it was a public interest litigation and appoint a Committee and then grant relief in favour of the writ petitioners. Whether such an extraordinary case has been made out herein is the question.

D Respondents are cooperative societies. They at the instance of some agents or the middlemen thought it expedient to invest in Fixed Deposit Receipts (FDRs) in Bank of Baroda and Indian Bank. The modus operandi appears to be that the brokers/intermediaries lured a few cooperative banks/credit societies for placing deposits with the branches of Bank of Baroda/Indian Bank in and around Surat as also at Bharuch wherefor a handsome commission/incentive ranging from 3.8 to 25 per cent used to be given. The Cooperative Societies themselves did not approach the Bank. All acts were done through the agents. The documents seem to have been sent through brokers who also delivered to them the Maturity Value Certificates in lieu of original FDRs or the FDRs/Xeroxed copies, in addition to delivery of drafts for commission. The commission used to be paid in cash. In some cases, the original FDRs were retained by the banks. However, the original documents sent by the cooperative societies to the banks in some cases were not available in the offices of the bank but a different set of documents were replaced in the files. Loans were raised against FDRs on the basis of such documents mainly for further investment by private individuals. Funds were withdrawn in cash either directly from their current accounts or by

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issuing cheques in favour of some individuals who reportedly discounted their cheques. A

13. The fact that the officers of the banks were involved in the entire dealings is not in dispute. It is furthermore not in dispute that some brokers/commission agents were also involved. To what extent, the authorities of the cooperative banks and/or cooperative societies were involved and/or in know thereof, however, is not very certain. B

Respondents - Cooperative Societies prayed for issuance of a writ of or in the nature of mandamus or any other appropriate writ, order or direction quashing and/or setting aside the letter at Annexure A dated 2.4.98 of respondent No. 1. It was furthermore prayed that the respondent Nos. 1 and 2 be directed to honour the FDRs copies of which were annexed thereto with the interest accrued thereon and to restrain the respondent No. 1 to appropriate the proceeds of the said FDR and also be further directed to honour the FDR with interest accrued thereon on such terms and conditions which the Hon'ble Court deems fit. C D

The learned single judge issued the following directions: E

"1. A Committee is hereby constituted as under:-

- (i) The Deputy Governor of the Reserve Bank of India himself or his nominee as the Chairman of the Committee. F
- (ii) One member to be nominated by the Deputy Governor of the Reserve Bank of India who shall be the officer of the highest rank in the Reserve Bank of India but subordinate to Dy. Governor. G
- (iii) One member from the Bank of Baroda/Indian Bank to be appointed by the Board of Directors of the concerned Bank preferably a Chief General Manager or an officer not below the rank of General Manager. H

- A II. The member from Bank of Baroda would participate in the meeting of this Committee only when the cases relating to the Bank of Baroda are taken up and the member from the Indian bank shall participate in the meeting of the Committee only when the cases relating to Indian Bank are taken up.
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- III. The Committee may evolve and follow its own procedure and will also have the power to examine summon or examine the witnesses.
- C IV. This Committee shall examine each and every case on its own merits with reference to the records desired to be made available and will give its findings with regard to the amount due and payable to the concerned petitioners/parties and the rate of interest. The Bank of Baroda and Indian Bank shall inform the Committee in writing about the undisputed amount with full details. This Committee shall also go into the question of the rate of interest payable in case of the undisputed amount, which is directed to be paid under this order. It will also be open for the Committee to opine as to who were the officers/employees/party responsible for this conspiracy and fraud.
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- V. The findings as may be given by the Committee shall be binding on both the sides and shall be implemented forthwith.
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- VI. The petitioners/parties on receipt of any amount as a result of the finding of the Committee as aforesaid, shall also give an undertaking to the concerned Bank before the amount is withdrawn, that in case as a result of CBI inquiry, it is found and held by the concerned Court after the trial that any amount had been withdrawn by any such party, as a part of the aforesaid conspiracy, etc. they will return such amount to the concerned Bank.
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VII. The Committee shall decide all these cases within a period of three months from the date the certified copy of this order is produced before the Dy. Governor of the Reserve Bank of India. A

VIII. It will be open for the petitioners/parties to agitate their grievance, if any, against the orders which may be passed as a result of the findings of the Committee constituted under this Court's order as aforesaid. B

IX. These directions are in addition to and not in derogation of any legal remedy, which any party may seek after the report of this Committee. C

X. For the time being, the concerned Banks, i.e. Bank of Baroda/Indian Bank shall disburse the undisputed amount, if any, with interest at the rate of Savings Bank Account to the respective petitioners/parties within 15 days from the date the copy of this order is produced before the concerned Bank. The payment shall be made through Demand Drafts in the name of the petitioners Societies/Banks/Depositors. However, if the Committee decides any rate of interest higher than the Savings bank Account, the consequences shall follow." D E

The learned single judge opined that there existed disputed questions of fact in respect whereof no definite finding could be arrived at having regard to the modus operandi of the persons involved. F

14. The private dispute between the parties were, thus, sought to be converted into a public interest litigation for the purpose of making an enquiry into the affairs of the bank by a Committee. G

The Committee was consisted of the following members:

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rection could be issued in the matter.

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Whereas the Chairman and Regional Director, RBI were of the opinion that the banks should refund the disputed amounts of deposit to the depositors; other two members representing the Banks were of the view that the return of the deposits may amount to double payments to the depositors.

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It was opined:

"The Committee is required to examine each and every case on its own merits with reference to the records and its findings in regard to amount due and payable to the concerned petitioner borrowers in terms of the terms of reference based on the orders of the Gujarat High Court. The modus operandi in perpetrating the fraud in respect of all the petitioner depositors has been the same. There have been only minor variations here and there. Couple of petitioner depositors has mentioned during their deposition before the Committee that some of them had gone to the banks' branches along with the middlemen/intermediaries for placing the deposits. The photographs and specimen signature of all the authorized signatories of the cooperative societies/cooperative banks were not available on the banks' record. The banks records also do not reveal that the authorized signatories had signed the account opening forms and the loan documents in the presence of the officials of the banks. The resolutions purported to have been passed for the purpose of availing of loans by the cooperative societies/cooperative banks have not been on their letterheads in almost all cases. In view of these reasons it has not been considered necessary to differentiate the cases of the petitioners and the Committee's recommendations are uniformly applicable to all the petitioner depositors.

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A Statement indicating the disputed and undisputed amounts submitted by the two banks to the Committee is given in Annexure 3. The undisputed amount deposited

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A with the Gujarat High Court by Bank of Baroda amounts to Rs. 3.16 crore and interest thereon at Savings bank rate Rs.29.02 lakh. An undisputed amount of Rs. 16.20 lakh has been remitted to the Income Tax Authority. The disputed amount of deposits aggregate Rs. 20.00 crore.

B In the case of Indian Bank, the undisputed and disputed amounts of deposits aggregate Rs. 72.85 lakh and Rs. 4.45 crore respectively. The bank has stated that it has deposited the undisputed amount of Rs.72.85 lakh with interest of Rs. 1.66 lakh in the Court.

C The refund of the deposits to the petitioner depositors by the banks should, however, be subject to certain terms and conditions which are as under:

- a) The cooperative societies/cooperative banks should execute necessary documents as per the banks' procedure.
- b) The banks could take indemnity bonds from persons acceptable to them apart from the cooperative societies/cooperative banks before effecting the refund of the disputed amount of deposits.
- c) In case at a later date for any reason the amounts are required to be refunded to the banks by the cooperative societies/cooperative banks they will have to pay interest at the prime lending rates of the bank concerned compounded at half yearly rest from the date of refund of the deposits by the banks till the date of repayment by the cooperative societies/cooperative banks to the two banks."

G Unanimity, however, was arrived at that no interest on the amount of deposits would be payable. It opined that the officers of the banks were primarily responsible for perpetration of fraud.

H Mr. Rao had taken us through various parts of the report as also the charge sheet submitted by the C.B.I. to contend that involvement of the brokers/commission agents appointed by

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some of the cooperative societies has also been found both by the Committee as also by the C.B.I. It was also submitted that in any event most of them were aware of the illegal transactions which had been going on and that they had directly or indirectly connived with the officers of the banks in respect of their activities, which would be apparent from the fact that they used to get a large amount by way of interest, a portion of which was paid in cash and which was not even accounted for.

Our attention has also been drawn to the charge-sheet filed by the Central Bureau of Investigation, wherein Jyotiben, the agent of the cooperative societies/bank has also been made an accused. One of the cooperative societies, it was pointed out, had even authorized her to enter into negotiations with the Bank.

In the said charge-sheet, it was stated:

"It has been stated by the executive and office bearers of the society that, we have appointed Jyotiben as the agent for the purpose of depositing and withdrawing the F.D. at Surat and to give loan on the F.D. Receipts etc. It is the say of this Jyotiben that, since there is a big lobby of industrialists and builders in Surat city, if they are given the loans on our deposits receipts, they are paying us 24% interest and on the other side, we are getting 11% interest, and thus, since we have been getting 35% interest, the deposits were made through them."

Mr. Sundaram, on the other hand, submitted that the fact that it was only the officers of the banks who have been found to be primarily liable and their modus operandi was to grant loan utilizing the said FDRs. wherefor the cooperative societies had no role to play.

It was urged that in view of the fact that the officers of the banks have been found to be liable, the cooperative societies should not be punished.

A 16. A writ court exercising the power of judicial review has a limited jurisdiction. A writ petition would lie against a State within the meaning of Article 12 of the Constitution of India. In-disputably, exercise of jurisdiction by the High Court is permissible in a case where action of the State is found to be unfair, B unreasonable or arbitrary. The question which should have been posed by the High Court was as to whether the action of the bank was so arbitrary so as to invoke the public law jurisdiction. If the answer to the said question was to be in the negative, the High Court should have refused to exercise its jurisdiction.

C A fraud has been practiced on the banks. Primary accused may be the bank officers but a conspiracy with them by the outsiders has also been alleged. The original FDRs only in some cases are available; in most of the cases they are not. Even the Committee could not decide for as to which one was the original FDR and which was not. It could not distinguish between an D original FDR and the Xerox copy thereof.

Opinion of the expert thereon might have been received, but the final verdict thereupon in the cases initiated by the C.B.I. is still awaited.

E 17. The law as regards application of the power of judicial review, inter alia, in the contractual filed stands covered by a large number of decisions. (See *LIC of India & anr. vs. Consumer Education & Research Centre & ors.*, [(1995) 5 SCC 482], *Sanjana M. Wig (Ms) vs. Hindustan Petroleum Corpn. Ltd.* [(2005) 8 SCC 242], *ABL International Ltd & Anr. vs. Export Credit Guarantee Corporation of India Ltd & ors.* [(2004) 3 SCC 553], *The D.F.O, South Kheri & ors. vs. Ram Sanehi Singh* [(1971) 3 SCC 864]. We, however, do not think that facts G involved in each case and the law laid down therein need to be discussed at length as there does not exist any dispute in regard to basic principles laid down therein.

In *M/s Hyderabad Commercials vs. Indian Bank & ors.* [1991 Supp. (2) SCC 340], this Court held:

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"Since the basic facts regarding the unauthorized transfer of the disputed amount from the appellant's account as well as the bank's liability was admitted, there was no justification for the High Court to direct the appellant to file suit on ground of disputed questions of fact. The respondent bank is an instrumentality of the State and it must function honestly to serve its customers.

Would the ratio laid down therein apply in the instant case? We do not think so. The question as to whether fraud has been committed by the officers of the bank is pending consideration before a competent criminal court. There are other various disputed questions which are required to be gone into in the said proceeding. The role played by some of the writ petitioners – respondents is also in issue. Such a seriously disputed questions of fact, in our opinion, could not have been gone into by the writ court.

We would accept the proposition of law as propounded by this Court in *Guruvayoor Devaswom Managing Committee & anr. vs. C.K. Rajan & ors.* [(2003) 7 SCC 546]. In that case it was, inter alia, observed that public interest litigation procedures may be adopted in a case where initially the writ petition was filed as a private interest litigation. (See also *Ashok Lanka & anr. vs. Rishi Dixit & ors.* (2005) 5 SCC 598 at page 618).

We may in this behalf notice development of law in other jurisdiction.

Abram Chayes in his article on "The Role of the Judge in Public Law Litigation" Harv. Law. Rev. Vol. 89 (1976) at Pg. 1281 opines that "Traditionally, adjudication has been understood to be a process for resolving disputes among private parties which have not been privately settled." He thus emphasizes the need for a "Public Law" model wherein "the traditional adversary relationship is suffused and intermixed with negotiating and mediating processes at every point. The judge is the dominant figure in organizing and guiding the case, and he draws for support not only on the parties and their counsel, but on a

A wide range of outsiders-masters, experts and oversight personnel.” He goes on to give examples of school desegregation, employment discrimination, and prisoners’ or inmates’ rights cases as also antitrust, securities fraud and other aspects of the conduct of the corporate business, bankruptcy and reorganizations, union governance, consumer fraud, housing discrimination, electoral reapportionment, environmental management- fields that display in varying degrees the features of public law litigation.

C According to him, The public law litigation model inter-alia has the following features:

D “7. The judge is not passive, his function limited to analysis and statement of governing legal rules; he is active, with responsibility not only for credible fact evaluation but for organizing and shaping the litigation to ensure a just and viable outcome.

8. The subject matter of the lawsuit is not a dispute between private individuals about private rights, but a grievance about the operation of public policy.”

E In *Krishna Swami v. Union of India and another With Raj Kanwar v. Union of India and Another* (1992) 4 SCC 605, a constitutional bench of this court had to decide upon the maintainability of a writ petition filed under Article 32 against the removal of a Supreme Court judge without impleading the judge himself as a party to the proceedings.

The court on the role of an investigation committee opined:

G “The investigation done by the Committee, thus is to find whether the alleged misbehavior incapacity has been proved. Undoubtedly, the public law litigation often contradicts the premise behind those of private law. In public law wider public interest it involved over and beyond he contending parties. It concerns the future and private law litigation is retrospective in operation.

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What the court could do? It could appoint a Committee. But the decision of the Committee would not have been decisive. The Division Bench appears to have applied its mind on the report, but in the absence of any categorical finding that it was the officers of the Banks alone who were liable, no direction as has been done in the instant case should have been issued. It may be that in appropriate cases, the court may find the recommendations made by the Committee acceptable.

18. But it is, in our opinion, not a public interest litigation in that sense of the term. The report, however, was not unanimous. The opinion of the Committee was a divided one on the crucial issue. Two members of the Committee were of the opinion that whether the amount deposited by the cooperative banks was received back by them or not, was yet to be ascertained. We are, therefore, of the opinion that it cannot be said that the fact finding body, assuming that the same could be constituted, made such recommendations which could be accepted by the Court without going into the merit thereof. It is also not a case where any mandatory relief could be granted in favour of the respondents.

19. Having however said so, we must pose unto ourselves a further question. Could those cooperative societies which had absolutely no role to play in the entire episode should suffer in any manner whatsoever? The cooperative societies/cooperative banks for the purpose of their day-to-day functioning, require the amount which they have invested in FDRs on their maturity. Should they wait till the criminal cases are over? Should they be pushed to institute civil suits? They can indisputably be compensated by grant of interest. What, however, happens if in the meanwhile in the absence of the requisite funds being available to them, they find it difficult to run the day-to-day affairs?

20. Answers thereto may be difficult to find but it is not a wholly impossible task. We think that the appellant Bank being a 'State' within the meaning of Article 12 of the Constitution of India with the assistance of officer(s) of the Central Bureau of

A Investigation should make all attempts to ascertain as to which of the cooperative societies/cooperative banks are in no way involved with the scam, and subject to such precautions as may be found necessary to be taken, release the amount in their favour.

B 21. In any event, the quantum of the amount which all the depositors would have otherwise received, in the event their investment in FDRs is found to be genuine, should be informed thereabout. Once the liability of the bank is determined, the bank may invest the said amount in its own account and issue fresh
C FDRs therefor. Whereas the bank may keep the original FDRs with itself, it may issue the duplicate copies thereof to the eligible cooperative bank. Such an exercise should be completed within a period of four weeks from date.

D 22. In the event, the cooperative society intending to avail loan facilities from the banks for running their business, may approach them which may apart from usual conditions release the same on a further condition that the amount of FDR would remain with them and on that basis, loans may be granted of such amount. The usual precautions in regard thereto may also
E be taken by the Bank(s).

F 23. We, while saying so, do not intend to lay down any law. These directions should not be treated to be precedent. We are issuing these directions keeping in view that the factual scenario obtaining in the case and that non-release of the amount is likely to enure hardships that may be faced by the cooperative societies. We would also direct the criminal court to dispose of the criminal cases pending before them with utmost expedition. These appeals are allowed with the aforementioned directions. There shall, however, be no order as to costs.

R.P.

Appeals partly allowed.