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THE BANKING COMPANIES (ACQUISITION & TRANSFER OF UNDERTAKINGS) ORDINANCE 1969

WRIT PETITION FILED IN SUPREME COURT

1969

INTRODUCTORY NOTE

The writ petition filed by Dr. R. C. Cooper in the Supreme Court of India with regard to the Banking Companies (Acquisition & Transfer of Undertakings) Ordinance 1969 evoked considerable interest among depositors. The writ petition is reproduced in this booklet for the benefit of interested depositors and members of the public. A similar petition had also been filed by two M.P.s Mr. M. R. Masani and Mr. Balraj Madhok.

ALL-INDIA BANK DEPOSITORS ASSOCIATION

(Bombay Branch)

235 Dr. D. N. Rd., Bombay-1.

IN THE SUPREME COURT OF INDIA,

ORIGINAL JURISDICTION

CIVIL WRIT NO. OF 1969.

IN THE MATTER OF:—

Rustom Cavasjee Cooper,
Palacimo Silver Oaks Estate,
Bhulabhai Desai Road, Bombay-26. .... Petitioner.

Vs.

The Union of India. .... Respondents

To

The Hon'ble Shri J. C. Shah, Acting Chief Justice of India and His Companion Justices of the Supreme Court of India, New Delhi.

THE HUMBLE PETITION OF THE PETITIONER ABOVENAMED MOST RESPECTFULLY

SHEWETH:—

1. The Petitioner carries on the profession of a Chartered Accountant and is a partner in the Chartered Accountants' firm of Messrs. Hansotia & Co. The Petitioner is a national and citizen of India.

2. The Petitioner is a Director of the Central Bank of India Ltd., Bombay. The Petitioner is also a shareholder in the Central Bank of India Ltd., the Bank of Baroda Ltd. and the Union Bank of India Ltd. The Petitioner has Current Accounts with the Union Bank of India Ltd. and the Bank of Baroda Ltd. The Petitioner deposits monies from time to time in these two Current Accounts, and also occasionally makes fixed deposits with some of the aforesaid banks in which he is a Shareholder.

3. That on the evening of the 19th July, 1969, Shri V. V. Giri, purporting to act as the President of India, promulgated an Ordinance called "The Banking Companies (Acquisition & Transfer of Undertakings) Ordinance, 1969". The Ordinance purports to have come into force at once. A copy of the said Ordinance is hereto annexed and marked Annexure 'A'.

4. Under the said Ordinance the undertakings of the following 14 banks are purported to be transferred to and to vest in the corresponding 14 new banks which have been constituted now under the Ordinance:

1. Central Bank of India Ltd.
2. Bank of India Ltd.

3. Punjab National Bank Ltd.
4. Bank of Baroda Ltd.
5. United Commercial Bank Ltd.
6. Canara Bank Ltd.
7. United Bank of India Ltd.
8. Dena Bank Ltd.
9. Syndicate Bank Ltd.
10. Union Bank of India Ltd.
11. Allahabad Bank Ltd.
12. Indian Bank Ltd.
13. Bank of Maharashtra Ltd.
14. Indian Overseas Bank Ltd.

5. The Petitioner says that the background to the enactment of the Ordinance was briefly as follows: —

About the middle of 1967 the Government put into effect its policy of social control of banks. Many directors, who represented trade and industry, had to resign from the Boards of various banks and in their place independent persons were appointed in conformity with the Government's policy and with the approval of the Reserve Bank of India. Even the Chairman of various banks had to resign and their place was taken, in most cases, by the Chief Executive Officers of the different banks. This policy of social control was given legal shape in the form of the Banking Laws (Amendment Act) 1968 which came into force in February 1969, hereinafter called '1968 Act'. That Act provided for extension of social control over banks and for matters connected therewith or incidental thereto. With the enactment of the 1968 Act, the Government assumed and in fact exercised the most rigorous "and detailed control over the banking system and the banking institutions. Every Bank had to conform to and follow the banking policy which is defined by the 1968 Act as "any policy which is specified from time to time by the Reserve Bank in the interest of the banking system, or in the interest of monetary stability or sound economic growth, having due regard to the interest of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources.

6. The banking policy of the Government, commonly called social control over banks, was systematically and vigorously pursued by the Government of India, and the top 14 banks, like the other banks, conformed to that policy and acted fully in accordance therewith. The material facts regarding banks and the banking

system and the operation and effect of social control over banks and the adherence by the banks to the governmental policy of social control are fully set out in the Note of the Hon'ble Shri Morarji Desai, the then Finance Minister, circulated at the A.I.C.C. Session at Faridabad in April, 1969. A copy of the said Note is hereto annexed and marked Annexure 'B'. The Petitioner craves leave to refer to and rely on the said Note of Shri Morarji Desai, as if the facts stated in the Note were stated herein and incorporated in this petition. For the sake of brevity, those facts are not repeated herein, but the Petitioner requests that those facts stated in the Hon'ble Shri Morarji Desai's Note should be treated as a part of the facts on which this petition and the legal submissions made herein are based.

7. The Hon'ble Shri Morarji Desai was relieved of the Finance portfolio on the 16th July 1969. The Ordinance, as stated above, was promulgated on the 19th July 1969. Sessions of the Lok Sabha and the Rajya Sabha have been both convened on the 21st July, 1969. Mr. V. V. Giri, the Vice President and acting as President of India, was scheduled to relinquish his office as the Vice President and to cease to act as President on or about the 19th July, 1969. The Petitioner submits that these dates have significance in the context of the submissions set out below:

8. The significant features of the said Ordinance are the following:

(a) The undertakings of the said 14 banks have been nationalized by being transferred to the corresponding new banks which are constituted under the Ordinance and of which the entire Share Capital is to be held by the Government of India. All the assets and liabilities of the said 14 banks have been transferred to the corresponding new banks.

(b) The chairmen, the managing directors and all other directors of the 14 banks ceased to hold their office and the management of the new banks is virtually assumed by the Government of India. The chairman of each bank becomes the Custodian of the new bank and is to act as the Chief Executive Officer till changes are made as provided by the Ordinance.

(c) Compensation is to be paid to the 14 banks on the principles set out in the Ordinance in the form of Government securities.

9. The Petitioner submits that he is directly and adversely affected by the Ordinance (a) in his capacity as a director of the Central Bank of India Ltd., (b) in his capacity as a shareholder of the aforesaid four out of 14 banks, and (c) in his capacity as a person, whose monies have been deposited with the

existing banks and have been transferred by the operation of the Ordinance to the new banks constituted under the Ordinance.

10. The Petitioner submits that the aforesaid Ordinance is inoperative, unconstitutional and void on the following amongst other:

GROUNDS

i) The said Ordinance has been enacted under Article 123 of the Constitution of India which runs as follows:

"If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require".

The petitioner submits that the condition precedent to the exercise of the President's power to promulgate an Ordinance under Art. 123 of the Constitution *is not satisfied in the present case.* There are no circumstances existing which could possibly render it necessary for the President to take immediate action. Both the Houses of Parliament are scheduled to meet on the 21st July, 1969, and there are no circumstances which could possibly justify the nationalisation of banks less than 48 hours before the Houses of Parliament are scheduled to meet.

The Petitioner submits that the scheme of the Constitution is explicit and clear. The laws of the land can be made only by Parliament through the democratic process of a debate and the taking of votes of the representatives of the people. The exception to this rule is the case where either House Parliament is not in Session and the President is satisfied that immediate action is necessary. The plain effect of Article 123 is that the power to promulgate an ordinance can be exercised only where the normal *law-making machinery is not available to the Government and the* situation is such that it can brook no delay. No such situation exists in the present case and no reasonable man can possibly take a contrary view. There are no circumstances whatsoever which can possibly justify resort to Article 123 of the Constitution less than 2 days before the two Houses of Parliament are scheduled to assemble, and no reasonable man could possibly come to the conclusion that circumstances existed which rendered it necessary to take immediate action of the type contemplated by the Ordinance. *The Petitioner sumits that the effect of the* Ordinance of this character is most far-reaching and is fraught with grave consequences, so far as the free working of the Parliament and the freedom of discussion and debate within Parliament are concerned. It is one thing to let Parliament debate freely the pros and cons of *bank nationalization. It is completely dif-*

ferent thing to face Parliament with the accomplished fact of bank nationalization already effected.

The promulgation of such an Ordinance at the present time when far-reaching social control is already in operation and the parliamentary law in the form of the 1968 Act has been honoured and respected by the Banks, is totally outside the scope and ambit of Article 123 of the Constitution.

The petitioner submits that the promulgation of the Ordinance amounts to a fraud upon the Constitution and is calculated to by-pass and circumvent the parliamentary process laid down in the Constitution. The petitioner submits that it is clearly an abuse of the constitutional process set out in Article 123 of the Constitution to resort to it in the manner sought to be done by the Ordinance, to face Parliament with an accomplished fact, to deprive thousands of shareholders of their property in the form of shares of the said 14 banks, to displace the existing managements, to transfer the deposits of a crore of depositors from the institutions which the depositors trust, to nationalize the undertakings of credit institutions, to disrupt and dislocate the delicate credit mechanism, and then to bring the vital issue before Parliament after the process of nationalization has been already completed. The petitioner submits that nothing is sought to be achieved by the Ordinance which could not have been equally achieved by a Bill which could have been brought before Parliament on the 21st July 1969 and which could have been passed by Parliament as expeditiously as the Government desired. The Petitioner says that there has been no breach by the 14 banks of any of the directives given to the banks by the appropriate authorities, but on the contrary, as the Finance Minister's own statement says, social control has been working satisfactorily over the banking sector. Thus the facts and circumstances of the case clearly negative and rule out altogether the necessity for any "immediate action" by the President before the Houses of Parliament would be in session on the 21st July, 1969. There has been no material change whatever in the relevant facts and circumstances since Shri Morarji Desai's said Note in April 1969 at the Faridabad Session of the Congress. The Petitioner will rely on and crave leave to refer to the proceedings of the Bangalore Session of the Congress in July 1969 in support of this statement, and also in support of the submission that no circumstances whatsoever existed which could possibly satisfy the President or any reasonable person that immediate action was necessary. The Petitioner submits that the promulgation of the Ordinance has been deliberately resorted to with a view to side-tracking the full, normal, effective functioning of the Houses of Parliament on a matter of the most vital significance to the national economy. In the circumstances, the petitioner is constrained to say that the promulgation of the Ordinance must be regarded as malafide, arbitrary and capricious and as not amounting to a proper exercise of an exceptional constitutional power. The petitioner submits that no circumstances which are relevant to the subject matter of the Ordinance existed necessitating immediate action under Article 123 of the Constitution, but the circumstances which apparently led to the passing of the Ordinance, were purely extraneous having no relevance to the subject matter of the Ordinance. The Petitioner says that the legislative power of the President has been used here to supplant the legislative powers of Parliament, which is directly contrary to the scheme of the Constitution in general and outside the ambit of Article 123 of the Constitution.

ii) The petitioner submits that Shri V. V. Giri resigned as the Vice-President (and therefore ceased to act as the President) some time earlier during the day, i.e. 19th July, 1969, on which day he signed and promulgated the Ordinance. The signing of the Ordinance was around 7.45 p.m. on that date, whereas Shri Giri had signed his letter or resignation earlier on that day and that letter had in law become effective prior to the signing and promulgation of the Ordinance. Therefore, the Ordinance has not been effectively promulgated by the President as required by Article 123 of the Constitution.

iii) Section 36-AE. of the 1968 Act runs as follows:—

"36-AE. Power of Central Government to acquire undertakings of Bombay Companies in certain cases:—(1) If, upon receipt of a report from the Reserve Bank, the Central Government is satisfied that a banking company—

(a) has, on more than one occasion, failed to comply with the directions given to it in writing under section 21 or section 35-A, in so far as such directions relate to banking policy, or

(b) is being managed in a manner detrimental to the interests of its depositors,—

and that—

(i) in the interests of the depositors of such banking company, or

(ii) in the interests of banking policy; or

(iii) for the better provision of credit generally or of credt to any particular section of the community or in any particular area,

it is necessary to acquire the undertaking of such banking company, the Central Government may, after such consultation with the Reserve Bank as it thinks fit, by notified order, acquire the undertaking of such company (hereinafter referred to as the acquired bank) with effect from such date as may be specified in this behalf by the Central Government (hereinafter referred to as the appointed day):

Provided that no undertaking of any banking company shall be so acquired unless such banking company has been given a reasonable opportunity of showing cause against the proposed action.

Explanation.—*In this Part.*—

(a) "notified order" means an order published in the Official Gazette;

(b) "undertaking", in relaion to a banking company incorporated outside India, means the undertaking of the company in India.

(2) Subject to the other provisions contined in this Part, on the appointed day, the undertaking of the acquired bank and all the assets and liabilities of the acquired bank shall stand transferred to, and vest in, the Central Government.

"(3) The undertaking of the acquired bank and its assets and liabilities shall be deemed to include all rights, authorities and privileges and all property, whether movable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of such property as may be in the possession of, or held by, the acquired bank immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations of whatever kind, then existing of the acquired bank.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is satisfied that the undertaking of the acquired bank and its assets and liabilities should, instead of vesting in the Central Government, or continuing to so vest, vest in a company established under any scheme made under this part, or in any corporation. (hereinafter in this Part and in the Fifth Schedule referred to as the transferee bank) that Government may, by order, direct that the said undertaking, including the assets and liabilities thereof, shall vest in the transferee bank either on the publication of the notified order or on such other date as may be specified in this behalf by the Central Government".

Thus the existing law passed by Parliament which has come into operation as late as February, 1969 already contemplates the nationalization of certain banks only in certain contingencies and subject to the reasonable safeguard that the banks sought to be nationalized should be given a reasonable opportunity of showing cause against the proposed action. The Ordinance is in gross violation of the law passed by Parliament so recently and is directly contrary to the basis and scheme of the aforesaid section 36-AE of the 1968 Act and is contrary to the reasonable safeguards and assurances contained or implied therein. The petitioner submits that this factor further shows the absence of circumstances necessitating any immediate action and shows that the Ordinance does not represent a bonafide and proper exercise of the exceptional power conferred by Article 123 of the Constitution.

iv) The entire banking system has been functioning under day-to-day comprehensive and thorough control and supervision by the Reserve Bank of India. Advances made by banks, the rate of interest charged on advances as well as banking in all its other aspects are strictly regulated by the Reserve Bank. Further, the entire banking system has been functioning under the extremely strict social control introduced from 1967 onwards. The petitioner will rely on and craves leave to refer to the relevant statutory provisions to indicate the type of control exercised by the Reserve Bank of India and the social control exercised over the entire banking system in the interest of the national economy. The petitioner submits that no public purpose could or would be served by nationalization of 14 banks. The petitioner submits that in fact public purpose and public interest would be sacrificed if the purported nationalization is allowed to be implemented.

iv)a Therefore, the Ordinance is unconstitutional and without authority of law and in violation of Articles 19(1)(f) and (g) and 31(1) and (2) of the Constitution.

v) The petitioner submits that the principles on which and the manner in which compensation is sought to be provided for the banking companies under the Ordinance are not legal and constitutional and, therefore, the provisions of the Ordinance are in violation of Article 31 of the Constitution of India.

vi) The Petitioner further submits that the Ordinance does not specify the principles on which and the manner in which the compensation is to be determined and given to the shareholders who are deprived both of their shares in the banking companies and of their right of management through their elected directors. Therefore, in any view of the matter, the ordinance is ultra vires and is violative of Article 31 of the Constitution. The Petitioner submits that the Ordinance is also in violation of Article 14 of the Constitution, inasmuch as it denies equality before law and equal protection of the laws within the territories of India and discriminates between different classes of banking companies, of shareholders, of bank directors and of depositors in a manner which has no reasonable relation to the subject matter of the Ordinance. The petitioner submits that the classification which rests solely on deposits exceeding Rs. 50 crores does not rest on a reasonable basis. The depositors and shareholders and directors of the fourteen top banks are discriminated against as compared to the depositors and shareholders and directors of the other banks which are permitted to function as before and as also compared to the depositors and shareholders and directors of the branches of foreign banks functioning in India.

11. The petitioner submits that since the matter is of great urgency and the Ordinance has been promulgated contrary to the express assurances given by and on behalf of the Government of India only two days before the Ordinance was promulgated, citizens like the petitioner, have been put to tremendous disadvantage inasmuch as a petition like this had to be prepared in great hurry in order that this Hon'ble Court may be moved on the very first working day when the Ordinance is proposed to be implented and interim relief obtained. The petitioner craves leave to supplement later the above grounds with the permission of this Hon'ble Court.

12. The petitioner submits that in the circumstances this Hon'ble Court will be pleased to declare the Ordinance to be void and unconstitutional and to restrain the respondent from giving effect to any of its provisions.

13. That the Petitioner has not filed any petition in respect of the subject matter of this Petition either in any High Court or any other forum or before this Hon'ble Court.

The Petitioner most respectfully prays that this Hon'ble Court be pleased

(a) to declare the Banking Companies (Acquisition and transfer of Undertakings) Ordinance 1969 to be ultra vires, unconstitutional and void;

(b) to issue a writ of mandamus or any other appropriate writ direction or order, restraining the respondent herein, their officers, agents and servants from enforcing or implementng any of the provisions of the Ordinance mentioned in clause (a) hereinabove; and

(c) pass such other and further orders as may be deemed just and proper.

And the petitioner shall as in duty bound ever pray.

21st July 1969.

ANNEXURE A.

Banking Companies (Acquisition and Transfer of Undertakings) Ordinance 1969.

(This has appeared in many dailies).

ANNEXURE B.

A Note On the Working of Social Control Over the Commercial Banking System.

A discussion of the performance of social control over banking could usefully begin by view ng it in relation to the wider perspective of the role of credit in the development process itself. The concern of the public is rightly with various aspects of development, the need to accelerate its pace, to correct regional imbalances and to reduce the concentration of economic power and with the role of financial institutions in these areas. However, to see the problem in its proper perspective it is not enough to concentrate on the banking system alone which provides finance for projects and programmes after they have come into being rather than provide funds to initiate them. The latter task is primarily with institutions established since Independence, all of whom except the ICICI are in the public sector.

At the central level we have the Industrial Development Bank of India as the apex institution, the Industrial Finance Corporation and, with a slightly different emphasis in its working, the Life Insurance Corporation of India. These institutions by and large cover the industrial sector, though the L.I.C.'s operations cover a wider field including provision of finance for infra-structural development. As regards finance for agricultural development we have the Agricultural Refinance Corporation at the Central level.

At the State level there are the various State Financial Corporations which in turn are able to draw on the resources of the Industrial Development Bank of India and the cooperative land development banks which in turn can draw on the resources of the Reserve Bank and the Agricultural Refinance Corporation.

There is today a degree of concern over the imbalance that prevails in regional development and the question has been posed as to the possibilities of correcting this through the operations of the financial institutions. The location of large industries in the public sector is determined by Government itself. In the private sector too location is one of the major factors taken into account when Government grants them an industrial licence. Financal institutions cannot by themselves correct the trend for industries to concentrate in certain areas and to keep out of others. Many things have to be done, such as the provision of infra-structural facilities like power and transport and other incentives, to attract industries to backward regions. This matter is under the supervision of the National Development Council.

Meanwhile what the All-Indis Institutions have been doing is to give special consideration to the point of relaxing some of their standards, the applications from less developed areas. For small scale industries the IDBI has kept its door wide open, providing refinance at a concessional rate to State Finance Corporations. But the flow of funds depends on how many applications the State Financial Corporations put in, and this requires a good deal of effort on the part of the State administrations themselves. The Agricultural Refinance Corporation provides refinance facilities to cooperative land mortgage banks among others, to finance developmental projects in agriculture. The Reserve Bank also provides finance at a concessional rate and on a liberal basis through the cooperative movement. The extent to which different States get the benefit of these schemes depends upon their success in ensuring satisfactory and efficient performance by the financial institutions which are primarily under the supervison and control of State authorities. States have a great deal to do to strengthen the cooperative movement through which a great deal of finance can flow to the agricultural sector.

Similarly unless State Finance Corporation and Land Mortgage Banks become more active and efficient, they cannot take the maximum advantage of assistance from the IDBI, the ARC and the RBI. The funds given must be used in an efficient and effective manner and the loans disbursed have to be recovered in time. It is of course important that banks should sustain the development that takes place through these methods and agencies by ensuring adequate supply of working capital.

Turning to the problem of concentration of economic power, financial institutions naturally follow the development policy adopted by Government. They anyhow assist only such projects as have received an industrial licence and whose terms of foreign collaboration, capital structure, etc., have been approved by Government. Furthermore, whenever any undesirable features of any project come to their notice they inform Government and consult with Government before taking a final view. So far as banks are concerned, they really come into play after a project has come into being and the pattern of their lending cannot but reflect the state of ownership of industry as it exists. Thus, if a few groups seem to get a high proportion of bank credit, it is because these groups have stakes in a high proportion of our industrial structure. However, it is worth pointing out that in the figures which are often quoted of the high proportion of credit going to single borrowers or single groups there are some which belong to the public sector. The Food Corporation of India and Hindusthan Steel, for example, are among the top ten borrowers from the banking system.

At the same time, it is important to ensure that when credit is scarce, as it often is, no individual borrower or class of borrowers exerts a pull upon such scarce credit resources by virtue of their being in control over the banks. It is, therefore, necessary to broaden the base of credit and prevent its exclusive use, and thus help to achieve for the banking system a position of impartiality and objectivity as between one applicant for credit and another. At the same time it is equally necessary that the flow of credit does not have a bias towards large scale industries as against other sectors and in particular against the small-scale industries and agriculture. More positively, the aim should be to align credit flows to the broader objectives of planned economic growth. It is with these objectives of achieving a wider spread of bank credit, preventing its exclusive use, directing its flow to priority areas and making it a live instrument of development that the scheme of social control over banking has been instituted.

The legal basis for bringing about social control has been the enactment of the Banking Laws Amendment Act which has come into force as recently as February 1, 1969. While the legislation provides for the setting in which the social control scheme has to operate, several of the organisational changes contemplated in the Act were in fact put through by the banks even before the Act formally came into force. The main organisational aspects of the scheme as set out in the legislation are firstly the reconstitution of boards of directors providng for a majority of non-large scale industrialist directors as well as due representation on them to small industrialists, agriculturists, cooperators and professional men. The law also provides for professionalisation of top management of banks through the appointment of wholetime Chairmen.

By now, all the 14 banks with deposits of Rs. 25 crores and above which are required to reconstitute their Boards and appoint whole-time Chairmen have already done so. These banks account for 77 per cent of total deposit business amongst the private sector banks in the country. Of the 9 banks with deposits between Rs. 10 and Rs. 25 crores and which account for 4 per cent of deposits with the private sector banks eight of them have reconstituted their boards while five of them have either already appointed or are appointing wholetime Chairmen. 43 banks which have deposits below Rs. 10 crores and which account for another 4 per cent of deposits with the private sector banks are also making progress in complying with the legislative requirements though *in their case the time limit for* such compliance extends upto February 1, 1970. Details in this regard are given in Appendix 1. All the 13 foreign banks have set up Advisory Boards in the prescribed manner, i.e. providing for majority of non-industrial membership and adequate representation for agricultural and small-scale industries interests.

The picture that emerges is one of effective compliance with the requirements of the law in the matter of organisational change. Another aspects of the social control scheme is the prevention of exclusive use of credit. Section 20 of the Act provides that banks should not make loans to its Directors or concerns in which its Directors are interested. Banks have been given a period of one year from the commencement of the Act within which to eliminate such loans already on their books. Between December 1967 and December 1968 *the data pertaining to 16 large* banks in the country (including the State Bank of India) indicate that loans to Directors and in concerns in which they are interested have been reduced from 10.1 per cent of local advances to *3.1* per cent. It is of interest to observe that in *1967* the State Bank of India had highest percentage of such advances. This cannot by any means be regarded as a criticism of the State Bank but only points to the fact that such lending was not inherently wrong in itself though one could conceive of possibilities of its being abused.

The other major aspect of social control is the functional one *of directing credit to the priorty sectors and of translating credit* priorities into individual bank credit decisions. The role of credit as an instrument of development is symbolised in the establishment and functioning of the National Credit Council under the Chairmanship of the Deputy Prime Minister. The Membership of the Council includes, apart from the Deputy Chairman of the Planning Commission and the Governor of the Reserve Bank of India, commercial bankers, cooperators as well as representatives of agriculture and industry, large and small, in the private and public sectors. The council which has met thrice so far indicated at its meeting in July 1968, the broad guidelines in respect of credit allocation to the agricultural and small industrial sectors. For agriculture, the Council suggested for 1968-69 additional credit of Rs. 35-40 crores (exclusive of finance for plantations, for marketing of crops and for procurement operations of foodgrains). *For small-scale industries, the Council* suggested additional credit of Rs. 60-70 crores in the year 1968-69. Following the Council's guidelines the Reserve Bank of India which has been charged with the task of implementing the decisions of the Council, has had a series of individual discussions *with the leading commercial* banks with a view to indicating to them the targets of credit expansion to the priority sectors for the individual banks concerned. As a result of these discussions, the targets of additional credit agreed with the commercial banks were Rs. 43 crores for agriculture and Rs. 74 crores for small-scale industries.

The Reserve Bank has also been in active and continuous touch with the commercial banks with a view to ensuring the effective compliance of banks of the targets set for them. At the end of February 1969 the figures show that the 20 leading commercial banks (which account for 86 per cent of banking business) had sanctioned additional credit limits to agriculture and small-scale industries over the June 1968 level of the order of Rs. 130 crores and Rs. 84 crores, respectively. The actual increases in credit outstanding, however, were Rs. 35 crores and Rs. 41 crores respectively. The sanction of credit limits which are effectively in force represents the earnest of banks in striving to attain the targets assigned to them. The actual increase in advances, however, depends upon a variety of factors including for instance seasonal factors in agriculture and in certain types of small industries as well as other considerations. On the whole the performance of banks is fairly satisfactory.

In considering the performance by banks in the first year we must necessarily take into account the fact that the increase in advances to the agricultural and small-scale industrial sectors calls for organisational steps by banks in setting up of separate specialists cells appointing trained personnel for these tasks and otherwise equipping themselves to expand their activities in these areas. All this necessarily takes time and considering that this is the first year in which they are significantly expanding their involvement in these areas, their record is not unsatisfactory.

The efforts made by a number of banks to select certain districts for intensive operation, particularly for the extension of credit on an intergrated basis to cover the farmers' needs from production to marketing and in cooperation with other agencies, particularly the cooperative system show promise. In fact, the National Credit Council has always stressed that the entry of commercial banks into the field of agricultural credit should aim at strengthening and supplementhing the cooperative credit movement and not compete with any to weaken the latter. The operations of the Agricultural Finance Corporation set up by the banks are also likely to pick up and most banks have been participating in schemes sponsored by the Corporation. In addition, banks have on their own sanctioned a large number of schemes. Some State Governments, e.g., Bihar, West Bengal, Tamilnadu and Haryana, have themselves proposed schemes which banks have readily taken up for financing.

To a considerable extent the degree of success which banks have attained depends upon the response and guidance which they received from State Governments and their agencies and these vary from State to State. In some areas, non-availability of supplies, e.g. tractors and pumping sets after limits have been sanctioned for their purchase have also hampered the utilisation of credit.

A qualitative review of the steps taken and difficulties encountered by banks in the small-scale industries sector shows a good deal of similarity with what has been said in respect of the agricultural sector. In addition, some new factors are also in evidence. The actual demand for credit from the small-scale sector seems to be appreciably lower than the target set.

Banks have also drawn attention to the fact that despite the efforts put in by them they are unable to locate sufficient number of borrowers who are not now being financed by the banking system. They have referred in this connection to the absence of uptodate lists of small industries even with the Directorates of Industries in several States.

An indication of banks' desire to increase their credit to these sectors is their move not to allow any rejection of a credit application from the priority sectors to be decided at the branch level but to be referred to the Central Office. It may be added that on the basis of such data as are available with the Reserve Bank, the percentage of rejections is extremely small.

While the Council has indicated specific guidelines in respect of agriculture and small-scale industries, it has indicated that the aim should be to fill in credit gaps in respect of small borrowers and generally the weaker sections of the community. Thus, retail trade has been indicated illustratively as on area where banks can increase their involvement. Though the Council has not set specific targets for expansion of export credit such credit constitutes another priority area for bank lending. Banks have been asked to reduce the interest charged by them on export credit by them both at the pre-shipment and post-shipment stage. An interest rate subsidy scheme is also in operation and banks are required to charge not more than 6 per cent per annum in respect of export credit. Even taking into account the interest rate subsidy, the effective ernings for banks on export credit are less than what they would have earned on domestic credit transactions.

Another aspect of social control is the importance attached to the expansion of the branch network of banks both from the point of view of mobilising deposits and widening credit facilities. The National Credit Council has also attached the highest importance to deposit mobilisation. The Reserve Bank on its part has been impressing upon the banks the importance of their branch expansion programme and to this end and in the light of the discussions in the National Credit Council has liberalised its own branch licensing policies and procedures. Partly related to this liberalisation, is the fact that in 1968 commercial banks opened as many as 674 new offices — the largest in any year so far. As many as 487 offices were in semiurban and rural centres and as many as 363 offices were in hitherto unbanked centres. The National Credit Council at its recent meeting (March 21, 1969) decided that the commercial banks should, as a matter of urgency, endeavour to cover all 'towns' as defined in the Census Report with a population of more than 10,000 with offices of commercial banks by the end of 1970. There is every reason to expect that this target will be achieved well before the date set especially, as following the discussions in the National Credit Council the branch licensing policy has now been further liberalized so that banks can now open branches in all centres other than metropolitan centres and port towns freely subject to their observing the ratio of one office in a banked centre to one in an unbanked centre and comply with the requirement of opening minimum number of branches in the underbanked States. In fact, one of the important aspects of the Reserve Bank's policy with regard to branch licensing is to expand banking facilities in those states where banking has not so far developed sufficiently. Banks are also adopting an intensive area approach and are selecting specific areas for branch expansion. Such branch expansion, it is to be hoped, will enable the entire country to be covered in course of time with a network of branches. This should also help to correct the present imbalance between the deposit mobilisation and credit expansion in all parts of the country.

While the various organisational and functional measures are designed to achieve the objectives of social control there still remains the problem of fashioning the banking structure to the needs of a developing economy. To this end, the Government have appointed a Banking Commission with wide ranging terms of reference to examine the present organisational structure of the banking system and make recommendations pertaining thereto. While the Banking Commission will make its recommendations on matters relating to the structure of banking, the achievement of the objectives of social control depends equally on the availability of personnel with the proper training and orientation. For Banks to be development-oriented bankers have to be development-minded. It is to this end and to strengthen the trend set in by the professionalisation of bank management that the Government have set up the National Institute of Bank Management. The Institute has begun to function recently.

While it is still somewhat early to expect results from the experiment of social control in terms of actual bank credit to the priority sectors and the like, it is clear that by and large banks have taken to the experiment in a spirit of responsive cooperation. The expeditious manner in which the large private sector banks put through the organisational changes relating to their Boards and wholetime Chairmen even before formal legislation was enacted, the manner in which they have reduced loans to directors, and concerns in which the latter were interested, and the steps they are taking to expand credit to the priority sectors are evidence of their desire to work the experiment of social control in a spirit of earnestness. In the event of any bank failing to do so the Banking Laws Amendment Act indeed provides for sanctions in the form of the take over of such a bank. Such a take over has to be viewed as a remedy in the event of the failure of a bank in its performance in regard to social control. It is thus performance that emerges as the criterion to decide whether a bank should be taken over and not as has sometimes been suggested, the mere size of a bank. Recent experience does not suggest that the large banks need to be taken over so as to be made to do something which they are not now doing. There is no reason why under social control they cannot be made to do what the State Bank is doing if that is in the national interest. Nor is it right that the State Bank should be expected to do what banks, as institutions concerned with the safety of their depositors' funds, cannot do. Mere nationalisation will not provide more resources. Banks are the custodians of peoples' savings and it is only natural that they exercise a degree of care in deploying the funds entrusted to them while at the same time making credit available in alignment with national priorities. Even the State Bank though responsive to national policies has to pay regard to the interests of its depositors. No bank whether in the public or private sector can abandon the test of viability of a credit transaction. The experiment of social control is a continuing one. It aims at socialisation of credit without nationalisation of banking. Our experience in the past year or so shows that it is an experiment whose results we have every reason to believe will be rewarding.

APPENDIX I

Action taken by banks with regard to reconstitution of Boards and Appointment of Chairmen

Of the 14 large Indian private sector banks with deposits of over Rs. 25 crores and which account for 77 per cent of all bank deposits in the private sector banks, all of them in this category and reconstituted their Boards of Directors in accordance with the provision 10(A) of the Banking Regulation Act and had appointed wholetime Chairmen with the approval of the Reserve Bank. As regards the 9 banks with deposits between Rs. 10 and Rs. 25 crores which account for 4 per cent of deposits with private sector banks, 8 of them had reconstituted their Boards in accordance with the provisions of the law. The proposals made by the ninth bank has since been approved and it is taking necessary steps in this direction. The bank has been informed that it should reconstitute its board before the 30th of April 1969 in line with the provisions of the Act. Out of the 9 banks in this category, three of them have appointed wholetime Chairmen; in the case of two more, the appointment of wholetime Chairmen has been approved in principle while the four other banks have been advised to take expeditious steps to appoint wholetime Chairmen. It may be pointed out that banks in this category have been given time till the 1st February 1970 to comply with the provisions of section 10(B) of the Banking Regulation Act which provides for the appointment of wholetime Chairmen.

As regards banks with deposits of less than Rs. 10 crores which number 43 *, but which account for only 4 per cent of total deposit business of private sector banks, two banks have already reconstituted their Boards though they are required to comply with the law only by February 1, 1970. Proposals from 15 other banks are under the consideration of the Reserve Bank at present. One of these banks has since appointed a wholetime Chairman, while three other banks have, in consultation with the Reserve Bank, decided on the appointment of wholetime Chairman. The other banks have been advised to take expeditious steps for the appointment of whole time Chairman. A factor that may be mentioned here is that small banks may not always be able to afford a wholetime Chairman and the special treatment for them has to be regarded in this light.

* It may be pointed out here that five of these banks are at present either under moratorium or contemplating merger with other banks/voluntary liquidation.

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ALL-INDIA BANK DEPOSITORS ASSOCIATION

In view of the rising tempo of banking activities in the country and the various legislations pertaining to that, it was thought necessary that the depositors' interests should be properly represented and protected. Accordingly, ALL-INDIA BANK DEPOSITORS ASSOCIATION has been formed to promote and protect the interests of bank depositors, with Shri D. N. Patodia, M.P., as President.

Membership of the Association is open to any person having a bank account. In order to broadbase the Association membership subscription has been kept at the nominal figure of Rs. 2/- only a year for individuals who own only savings bank accounts, Rs. 10/- for other individuals and Rs. 25/- for companies.

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