

very fact that after the submission of the letter of withdrawal of resignation the petitioner was allowed to work show the bonafide of the petitioners case that he did not resign voluntarily. Furthermore, Regulation 53(1) of Bangladesh Biman Corporation Employees (Service) Regulations, 1979 has clearly provided that a permanent employee shall be required to give one month's notice should be wish to resign from the service of the corporation and in this case no such notice as required by law was also given by the petitioner. We are of the view that the petitioner having withdrawn his letter of resignation before the same could be accepted by the respondents it had no legal effect and he continued in service. We find substance in the submissions made by the learned counsel for the petitioner and we hold that the respondents acted illegally, malafide and without jurisdiction in accepting the resignation letter as communicated by the impugned memo.

8. In view of the discussion made above, we declare the impugned acceptance of resignation of the petitioner communicated by Biman letter No. DACGF/P-34506/98/2658 dated 16.9.98 (Annexure-E) to have been made without lawful authority and is of no legal effect.

In the result, the Rule is made absolute without any order as to costs.

KAK

## High Court Division

(Criminal Revisional Jurisdiction)

*Badrul Islam Choudhury and Md. Abdul Matin, JJ*

**Criminal Revision No. 471 of 1997**

**Monir Hossain** ..... . . . . . Petitioner  
Vs

**The State** ..... . . . . . Opposite Party

**Date of Judgment** : The 8<sup>th</sup> of June, 1997

**Result** : Petition summarily rejected

**Code of Criminal Procedure, 1898 (V of 1898)**

**Section—561A**

*Mere admission of another petition under section 561A of the Code challenging the same judgment cannot be a ground for admission of the subsequent petition under the same provisions of law by another convict unless he satisfies the Court that he had cogent reason for not preferring any appeal under section 561A of the Code as early as possible and that the impugned judgment suffers from inherent illegality.*

(Para—3)

Mr. Mohammed Yeasin Khan, Advocate for the petitioner.

## Judgment

**Badrul Islam Choudhury, J:** This petition under section 561A Crl. P.C. is directed against the judgment and order dated 19.4.95 passed by Mr. Md. Forkan Ullah, Sessions Judge and Special Tribunal No. 1, Brahmanbaria in Special Tribunal Case No. 1 of 1993 convicting and sentencing the present petitioner and others to suffer rigorous imprisonment for 7 years and to pay a fine of Tk. 5000/- with default order under section 4(b) of the Cruelty to Women (Deterrent Punishment) Ordinance, 1983.

2. Heard Mr. Md. Yeasin Khan, the learned Advocate for the petitioner, perused the petition under section 561A Cr. P.C. and the impugned Judgment.

3. It is stated in the petition that the accused persons of the case including the petitioner were absconding and so after complying with the provisions of section 339b(1) Cr. P.C. the trial was held in absentia. Charge was framed on 29.3.94 and in the trial the prosecution examined 9 witnesses and thereafter the learned tribunal on consideration of the evidence passed the impugned judgment of conviction and sentence. The explanation as to why the accused petitioner did not file any appeal within time or a revisional application under section 561A Cr.P.C after his arrest is that the old father of the petitioner was not able to take necessary step for obtaining copies of the judgment and other documents necessary to prefer criminal revision and hence the delay. This explanation is totally unsatisfactory. We have perused the impugned judgment of the trial Court and in it we do not find any misreading of evidence or improper application of law and as such we do not find anything to interfere. It appears from the contention of the learned Advocate for petitioner that another convict preferred a petition under section 561A Cr.P.C in which Rule has been issued and being encouraged by that the present petitioner has come up with the petition under consideration. Mere admission of another petition under section 561A Cr.P.C. challenging the same judgment cannot be a ground for admission of the subsequent petition under the same provisions of law by another convict unless he satisfies the court that he had cogent reason for not preferring any appeal or a petition under section 561A Cr.P.C. as early

as possible and that the impugned judgment suffers from inherent illegality, so we do not find anything to interfere.

Accordingly, the petition under section 561A Cr.P.C is summarily rejected.  
KAK

## High Court Division

(Special Original Jurisdiction)

*K.M. Hasan and Khademul Islam Chowdhury, JJ*

**Writ Petition No. 4938 of 1999**  
**Professor Muzaffer Ahmed.... Petitioner**

Vs

**Bangladesh Bank & others... Respondents**

**Date of Judgment : The 14<sup>th</sup> March, 2000**

**Result : Rule absolute**

**Societies Registration Act 1860**

**Section—20**

**Foreign Donation (Voluntary Activities) Ordinance, 1978**

**Section—2(d)**

*A scrutiny of section 20 of the Act and section 2(d) of the Ordinance will establish that the purposes for which a society is registered under the Act and assistance is given to an organisation under the Ordinance, are basically non-profit making and voluntary in nature. They can engage in activities with service oriented zeal to the community without entering into purely commercial venture. Allowing BRAC to purchase shares of BRAC Bank will cause a metamorphosis, changing BRAC from a society to a company which is not legally allowed. Not only that, there will also be probability of plethora of laws, like Bankruptcy Act, Income Tax Act, etc. coming into conflict with the Societies Registration*

Act, resulting in serious legal complications in future.

Unless otherwise authorised, no new territory can be included in section 20 of the Act and section 2(d) of the Ordinance which specifically provide for a society to engage in the fields set out therein and they do not contemplate undertaking of investment of money in purchasing shares in a corporate entity like a banking company. BRAC is neither empowered by any legislation, nor allowed by its Memorandum and Articles of Association, nor authorised by the Societies Registration Act nor by the Foreign Donation (Voluntary Activities) Regulation Ordinance, 1978, to buy shares to own, promote or control a bank.

(Paras—28, 29, 30, 32, 35, 39, 40, 41, 42, 43, 44, 50 and 51)

### Distinction between a Society and a Company

The activities which may be undertaken by societies are vastly separable from those which may be undertaken by the companies. The divide is created by the different pulpits upon which they stand. A society is a creature under the Societies Registration Act, whereas the other is a creature under the Companies Act, the Bank Companies Act, etc. As a result, their profiles remain different and their activities remain captive to their respective domains, they tread on their own terrain quite different from each other. (Para—49)

### Lifting the Veil of Incorporation

The circumstances, under which the fundamental principle of corporate entity as laid down in Salomon's case may be disregarded, are many, one of which is to find whether there exists the relationship of holding and subsidiary companies, among a group of companies.

The Board of BRAC Bank is composed of BRAC, represented by Mr. Abed and some

other individuals who are not only it's members but also it's employees. The control of the composition of the board or BRAC bank i.e., power to appoint or remove a majority of the board passes to BRAC. They will remain separate entities in name alone but to all intent and purposes they are the same economic unit. In sum, BRAC Bank is BRAC which is a society registered under the Societies Registration Act, 1860, not allowed by law to purchase shares in a banking company. Instead of remaining a charitable and social welfare society it will become a financial institution with a vital role to play in the economic dynamics and money market of the country. BRAC as a creature under the Societies Registration Act, is not allowed in this sort of venture investment. (Paras—53, 54 and 55)

### No consistent and inflexible principle for lifting the veil of Incorporation

Piercing the veil of incorporation has become imperative so that an error in law is not made, public inconvenience is defeated and public injury caused thereby is avoided. Both Gower and Farrar have classified in their books various categories of cases where the corporate veil may be pierced by the Court. But they also agree that no consistent and inflexible principle can be evolved in determining the question as to whether the veil of incorporation should be lifted or not. It remains on the court to decide whether the facts of the case justify the lifting of veil of incorporation and this Court held that this is an apt case to do so. (Para—56)

### Bank Companies Act, 1991 (XIV of 1991)

#### Section—144

##### Family

It includes among others, '... any other persons dependent of such person.' In the instant case 'such person' is BRAC and the rest of the subscribers are it's dependents. In

other words BRAC itself holds 99.97% of the shares in the BRAC Bank, the balance being subscribed and held by its employees and members of the governing body.

(Paras—57 and 58)

#### Bank Companies Act, 1991 (XIV of 1991)

##### Sections—144 and 121

##### Waiver of restriction

Waiving the restriction imposed under section 14A regarding holding of not more than 10% shares by a person, company, members of a family, was published on 3 February, 2000, after the issuance of the Rule in this writ petition on 12.12.1999. By this gazette notification, an undue favouritism has been shown and discrimination has been made, in favour of BRAC Bank, only to remove its incapacity to operate, which the authority became aware of, after the issuance of the Rule in which the letter of 'no objection' itself and the registration of the bank and the certificate of incorporation have been challenged. Apparently, on the days the letter of 'no objection' was issued i.e., 4 April 1999 and the Bank was registered on 20 May, 1999, there was no waiver and BRAC Bank did not meet the initial requirement for incorporation.

(Para—59)

#### Bank Companies Act, 1991 (XIV of 1991)

##### Section—14

From the Memorandum and Articles of Association of BRAC Bank it appears that the paid up capital is only Tk. 20 crores far less than one-half of the subscribed capital. It may be argued that BRAC Bank has not yet commenced its business, but the fact remains that after obtaining the no objection certificate and completion of registration, the BRAC Bank has proceeded with the opening of its office at Gulshan and fixed the date for its opening in a few days time. Thereby process of commencement of business has already

started without satisfying the requirement.

(Paras—60 and 61)

#### Constitution of Bangladesh, 1972

##### Article—102

##### Locus Standi—Error of Law

The petitioner's interest in the subject matter seems to be bonafide to espouse a public cause, involving public wrong in as much as there has been a gross violation of the laws relating to the Societies Registration Act, 1860, the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978, affecting the fundamental rights of an indeterminate number of people, including intending promoters of banking who steadfastly adhere to the laws of Bangladesh. All these demand the Court to be responsive and to react to the alleged error of law and the consequent public injury, caused by the issuance of the impugned letter of 'no objection' and the registration of BRAC Bank by the Bangladesh Bank and the Registrar, Joint Stock Companies respectively.

(Paras 62-63)

9DLR(SC)178; ITA Nos. 551 and 552 (unreported); Asalata Roy V Society for the protection of children of India 51 C.C.J. 272; Anjuman Islamia of Muttara V Naziruddin, 28 All 384; National Deposit Friendly Society Trustees V Skegnes All E.R. 1958(2) page 601; Trustees of the Harbour of Dandee Vs D and J Nicol and others 1915 AC 550; Attorney General Vs. Mercy Railways, 1 Chancery 1907 page 606; Land Allotment Company Case (1894) 1 Ch. 81 H.L. 617; Guiness V Land Corporation of Inland Corporation of Ireland 22 Ch D. 349; Salomon's Case 1897 Appeal Case 22, DHN Food Distributors Ltd. V Tower Hamlets L.B.C (1976) I.W.L.R. 852 C.A; I.T. Commr. Madras V Meenakshi Mills Madras, AIR 1967 (SC)819; Delhi Government Authority V Skipper C~

AIR 1996 (SC) 2005; Civil Revision 105 (c) & 106(c) 1981 (unreported); United States V Milwaukee Refrigeration 142Fed. 247 (1905); Dr. Mohiuddin Farrooque Vs. Bangladesh, 49 DLR(AD)1; AIR 1989(SC)2105—Cited.

Mr Tawfique Nawaz with Mr. Kazi Shahabuddin Ahmed, Mr Md.Feroze, Mr. Jasmuddin Ahemd, Ms Seema Haider Chowdhury and Ms Azra Nasreen Rahman, Advocates for the Petitioners.

Syed Ishtiq Ahmed, Dr. Kamal Hossain, Mr. Asaduzzaman, Senior Advocates, for the Respondent Nos. 4-10.

Mr A.F.M. Meshbahuddin, Advocate for the Respondent No. 1.

Mr. A.M. Aminuddin, A.A.G. for the Respondent No. 2.

Mr. Rafiqul Huq, Dr. M. Zahir, Mr K.S. Nabi and Mr. Mahmudul Islam, Senior Advocates.... Amicus Curiae.

## Judgment

**K M Hasan, J:** The Rule was issued calling upon (I) the Respondent No. 1 to show cause as to why the impugned order dated 4<sup>th</sup> April, 1999 (Annexure-A), issued by the Respondent No. 1, giving it's "no objection" to the Respondent No. 4, to incorporate the draft Memorandum and Articles of the Respondent No. 5 with Registrar of Joint Stock Companies, should not be declared to have been made and issued without lawful authority and of no legal effect, and (II) the Respondent No. 2 to show cause why the Memorandum and Articles of Association and the certificate of incorporation (Anexures C and C-1) of the Respondent No. 5, incorporating it as a public company limited by shares and a banking company should not be declared as having

been made without lawful authority and is of no legal effect.

2. The facts, in short, as stated in the petitioner are that the petition is a citizen of Bangladesh, a distinguished Professor of Economics, sometime President of the Economics Association of Bangladesh, Director of the Institute of Business Administration, Dhaka, a former member of the Cabinet in the Government, Member, Advisory Committee of Ministry of Finance, 1997, Member, Board of Governors, Bangladesh Institute of Bank Management (1980), Member, Taxation Enquiry Committee, 1977, Member, National Committee of Finance and Banking, Executive Vice President of United Bank Ltd. (1976-77), Chairman, Bangladesh Shilpa Bank (1980-82), Member, Board of Governor of Bangladesh Institute of Development Studies, 1978-88 and enjoying high reputation nationally and internationally for his involvement and contribution to economic and financial matters of the country.

3. The Respondent No. 4 Bangladesh Rehabilitation Assistance Committee, hereinafter called, BRAC, is a registered society having registered with the Registrar, Joint Stock Companies on 18, November, 1972 under the Societies Registration Act, 1860.

4. The contention that has given rise to this writ petition is that whether a society registered under the Societies Registration Act, 1860, can purchase shares in a banking company, the nature of which is purely commercial and profit making, in contrast to charitable and non profit making nature of a society and the consequence that would follow. The Respondent No. 5, BRAC Bank Ltd., is purportedly a commercial bank, further

purportedly incorporated with the Registrar, Joint Stock Companies as a public company limited by shares, but is yet to commence its business as a banking company. Certified copies of the Memorandum and Articles of Association of the respondent No. 5 and its Certificate of incorporation, are impugned and annexed as Annexures C and C-1 respectively. As a result of the registration and the incorporation BRAC, the Respondent No. 4, a registered society is allowed to own, control, manage and operate BRAC Bank.

5. The Respondent No. 1, Bangladesh Bank, issued the impugned letter dated 4 April, 1999, giving its "no objection" to incorporate the draft Memorandum and Articles of Association of the proposed BRAC Bank with the Registrar of Joint Stock Companies (Annexure A-1). Pursuant to the issuance of the impugned letter of no objection the Respondent No. 4 proceeded to incorporate the Respondent No. 5 with the registrar of Joint Stock Companies and Firms. Thereafter, the respondent No. 4 invested money in the BRAC Bank, the Respondent No. 5, to the extent of Tk. 19,99,00,400/- (Taka Nineteen crores ninety nine lac four hundred) only, being 99.97% of the paid up capital of the Respondent No. 5. This will be evident from the Memorandum and Articles of Association of the respondent No. 5 (Annexure-C). It is stated in the petition that from the objects of BRAC, the Respondent No. 4, (Annexure-A) it will be apparent that it is entitled to engage itself in charitable purposes and other activities set out under section 20 of the Societies Registration Act, 1860, but not permitted to undertake the activities of sponsoring, owning, controlling or operating a banking company or for that matter an airline, shipping company, construction company or other commercial enterprise. It is contended in the

petition that the ownership by BRAC in the purported BRAC Bank Ltd. is not consistent with section 20 of the Societies Registration Act, 1860 in as much as the said section 20 of the Act contemplates activities of registered societies in the field of promotion of science, literature, fine arts, diffusion of useful knowledge etc. but not as public company limited by shares.

6. Therefore, the respondents have acted deliberately and in a calculated manner, in complete disregard of the laws of Bangladesh and the capacity of the Respondent No. 4 to establish a public company and a banking business and further in conflict with several other laws like Bankruptcy Law, Taxation Law and laws of Dissolution.

7. Being aggrieved by the letter of no objection issued by the Respondent No. 1, (Annexure A) and the incorporation of BRAC Bank by the Registrar, Joint Stock Companies and the Certificate of Incorporation, Annexures C and C-1, the petitioner moved this application and obtained the Rule.

8. The Respondent No. 1 and the Respondent Nos. 4—10 by filing two separate affidavit-in-oppositions deny the material allegations and submit that the petition is not maintainable for gross laches and lack of standing. On gross laches it is pointed out that the petition was filed on 12 December, 1999, eight months and eight days after the issuance of the letter of no objection on 4, April, 1999, and nearly seven months after the issuance of the impugned certificate of incorporation dated 21 May, 1999. Regarding locus standi the respondents claim that the petitioner does not explain in the petition how the petitioner could have any genuine grievance in the matter to invoke the writ jurisdiction of this court. The petitioner does not even identify in-

fringement of any particular fundamental right. The respondents also contend that section 20 of the Societies Registration Act, 1860, is not violated as it has initiated a banking business only with the intention of generating income to be used in the charitable activities of the Respondent No. 4.

9. Then they go on giving a detail of how BRAC came into existence and how successful it became in its charitable activities which has made them the largest NGO in the country. Its name was initially Bangladesh Rehabilitation Assistance Committee in short, BRAC, while it was registered under the Societies Registration Act, 1860, in 1972. The name was first amended by a resolution adopted in an Extra Ordinary General Meeting of the society on 3.4.74. and was changed to Bangladesh Rural Advancement Committee which was duly registered by the Registrar of Joint Stock Companies and Firms (Annexure—1). Subsequently by another special resolution of the Society on 15.6.92 the name of Bangladesh Rural Advancement Committee (BRAC) was changed to its acronym, BRAC, which was also duly registered by the Registrar of Joint Stock Companies & Firms (Annexure—I).

10. The respondents claim that the respondent No. 5 is a properly formed banking company, which is duly incorporated with the Registrar of Joint Stock Companies, as a public limited company, having complied with all applicable laws, rules and regulations for the time being in force. The certificate of incorporation under section 24 of the Companies Act, 1974; was duly granted by the Registrar of Joint Stock Companies and is conclusive as to the statements in respect of the respondent No. 5. The respondent No. 5 has been lawfully constituted and has been given

the Certificate for commencement of business dated 20.5.99 which certificate is annexed as Annexure-1 and a licence dated 21.7.99 to operate as a bank Annexure-2.

11. BRAC Bank was granted banking licence and necessary permission for opening offices on 21.7.99. It has already appointed the Managing Director, two Vice Presidents and other subordinate staff. Besides, it has rented premises with effect from 1 October, 1999 and made all other arrangements for the opening of its first branch at Gulshan on 2, January, 2000 but, because of the stay order, issued by this Court on 12.12.99, it could not be opened. It is further stated in the affidavit-in-oppositions that the respondent No. 4 does not retain 100% ownership and control over the respondent No. 5 in accordance with the conditions of the licence granted by the Bangladesh Bank. The respondent No. 4 and its nominees, if any, may together own only up to 50% shares of the Respondent No. 5, BRAC Bank.

12. Respondent Nos. 6,7,8,9 and 10 are citizens of Bangladesh and have purchased shares of BRAC Bank, Respondent No. 5, on their own account. They have full legal capacity to act and the fact that they are employees of Respondent No. 4 do not in any way impair their legal capacity. Therefore, the statement that the respondents have no individual identity is untenable in law. The statement made in the petition that Respondent Nos. 8, 9, and 10 are not separable from Respondent No. 4 is, therefore, patently absurd.

13. It is claimed in the affidavit-in-opposition that the Respondent No. 4 is a charitable organisation and registered as such under the Societies Registration Act, 1860. The memorandum of the Society i.e. the memorandum of Respondent No. 4, provides,

among other objects of the Society, in Article 3 (1) to engage in charitable purpose and social welfare activities strictly on non-profit basis. Object clause (xv) contained in Article 3 of the memorandum of the Society, authorises it to invest and deal with the money of the Society, not immediately required, in such manner as may from time to time be determined. Similarly, sub article (xxii) authorises it to do all such other things as are incidental or conducive to the attainment of the above objectives.

14. Therefore, the Memorandum of the Society of respondent No. 4 clearly permits it to invest its money in purchasing shares of a corporate entity, be it a banking company or otherwise. Respondent No. 4 by purchasing shares in respondent No. 5, is in no way converting itself to or acting as a public company limited by shares. The above ownership of shares in respondent No. 5 is conducive to the charitable activities of the respondent No. 4 which are fully within the ambit of the activities contemplated by the Societies Registration Act, 1860, and as such, are not barred by either Societies Registration Act, 1860, or any other law, rule or regulation for the time being in force, and the income received from other companies and business projects of the Respondent No. 4 will augment the funds of the respondent No. 4, for its object to ensure that credit is provided to low and middle income groups, or to enhance their earning capacity and thus to promote social welfare in accordance to its object, or to generate income as dividend for the Respondent No. 4, which will be utilised to carry out its charitable and social welfare activities. The Respondent No. 4, BRAC, is a world renowned charitable organisation, which has full legal capacity to sponsor a bank company and for that matter any other company. Under the provisions of

the Societies Registration Act, 1860, it can hold property, sue and be sued, through its Governing body or in accordance with its Memorandum through any committee so authorised by its Governing Body. In the instant case, by a resolution dated 5th February, 1997, the Governing Body of the Respondent No. 4 resolved that the respondent No. 4 would be a promoter of the proposed BRAC Bank (Annexure-3).

15. It is further stated in the affidavit-in-opposition that the Respondent No. 4 is the holder of fully paid up shares in the Respondent No. 4, which is a public limited company. The liability of the Respondent No. 4 in respect of the bankruptcy of Respondent No. 5, will be limited in any event to the unpaid portion of any call on any shares held by it in Respondent No. 5. Therefore, the question of the Respondent No. 4 not being liable to bankruptcy proceedings is irrelevant. Respondent No. 5 is a public limited company and a bank company and not being a charitable organisation, is full subject to the provisions of the Bankruptcy Act 1997. It is further stated that besides the Societies Registration Act, the respondent No. 4 is registered as a society under Foreign Donation (Voluntary Activities) Regulation Ordinance, 1978 and Social Welfare Voluntary Agency Ordinance 1961. The affidavit-in-opposition then continues to state that in the circular dated 30.9.86 the External Resources Division of Ministry of Finance, has clearly suggested that all NGO's operating in Bangladesh, should undertake some income generating projects along with their scheduled program, on a non profit basis, so that dependence on foreign donations may diminish.

16. It is further stated that BRAC's earnings are also from its own income earning

projects such as BRAC Printing Press, Aarong Shops and Dairy Products, etc. It also receives incomes from investments in related companies such as BRAC Housing Finance Corporation Ltd. BRAC BD Mail network, BRAC Rennet Agro Industries Ltd and Bengal lands Ltd.

17. The grounds taken by the petitioner are, that issues of grave and serious public interest and serious questions of law have arisen, pursuant to the issuance by the Respondent No. 1 of the impugned letter giving its no objection to the Respondent No. 4, to incorporate a banking company and by registration of BRAC Bank by the Registrar of the Joint Stock Companies. The Respondent No. 1, before issuing the impugned letter, failed to ascertain the legal capacities of the Respondent No. 4, a registered society, to sponsor, invest its money and subscribe shares to the extent of 99.97% valued at Tk. 19,99,40,000/- only, of the purported banking company, and further to allow the Respondent No. 4 to own, control and operate the said purported banking company. The respondent No. 4 as a registered society under the Societies Registration Act, 1860, or as a charity under the common law, or under the Trusts Act, 1882, if it were to be so deemed to be a charity or Trust, has no legal capacity to invest in a banking company. The Respondent No. 1 failed to appreciate that the Respondent No. 4 is a registered society whose terms and objects, as set out in its Memorandum of Association, do not permit the Respondent No. 4 to sponsor, invested in, subscribe, own, control and undertake the business of banking. The Respondent No. 2, the Registrar Joint Stock Companies & Firms has failed to appreciate the Respondent No. 4 is legally incapable of sponsoring and /or incorporating a public company limited by shares which is a precondition for establishing

a banking company in Bangladesh. The Respondent No. 1 has failed to appreciate that the ownership, control, management and the undertaking of banking business by the Respondent No. 4 is unlawful in as much as, it is inconsistent with several laws, particularly, laws of dissolution and winding up of companies, and the laws of the ultimate liability of the owners or shareholders, as a society, registered under the Societies Registration Act, 1860 cannot be wound up under the Bankruptcy Act. The Respondent No. 1 has also failed to understand that an NGO that receives donation from foreign donors under the Foreign Donation Act, can only utilise the money thus received, in voluntary activities. The respondents misconstrued the ERD circular No. ERD/NGO-II /SC/86/ 586 dt. 3.9.86, presented to us at the time of hearing, which is to the effect, "... all the NGO's (both foreign and local origin) should undertake along with their usual programme, some income generating projects on a non profit basis". by overlooking the words, "on a non profit basis". The respondents have acted contrary to public interest, in violation of Article 102 as the impugned letter concerns a public injury and invasion of fundamental rights of an indeterminate number of people suffering common injury. The respondents have undermined the petitioner's fundamental rights and the fundamental rights of a multitude of individuals, by acting in breach of Articles 27 and 31 of the Constitution. Lastly, the promoters being BRAC and its employees, the number of persons subscribing shares of BRAC Bank is less than seven persons, a requirement for incorporating a public limited company.

18. Syed Ishtiaque Ahmed, the learned counsel, appearing on behalf of the Respondent Nos. 4-10 has, at the very beginning, assailed the contentions of the petitioner on the

ground that no factual basis has been laid down in the petition, for the allegations made therein. It does not even clearly state what fundamental right of the petitioner has been prejudiced by the issuance of the impugned letter of 'no objection' and the registration of the Respondent No. 5 BRAC Bank. He has submitted that there is no bar for a society to start a banking company. In support of his argument he has given the example of Islamic Bank, Trust Bank Ltd. established under Army Welfare Trust, BASIC Bank established under BCCI Foundation and Delta BRAC Housing Finance Corporation. Syed Ishtiaque Ahmed then submitted that in this particular case the word 'commerce' should not be read in its ordinary sense, but should be given a special meaning, as the earning from the purported BRAC Bank would go to promote its charitable purpose. In this connection he has referred to the case of Trustees of the National Deposit Friendly Society Vs. Skegness Urban District Council reported in All ER 1958(2) page 601 relevant page 612, discussed in a subsequent para.

19. He has also argued that as long as there are seven shareholders no objection should be given to the formation of a company unless they are incapacitated by some other law. There is a conclusive presumption that the company is validly incorporated under section 25 of the Companies Act and to rebut that presumption the onus is on the party making the allegation. In the instant case the petitioner has failed miserably in his efforts to establish that the BRAC Bank is not validly incorporated. He has then submitted that it is for the Income Tax Authority to decide whether the profit from BRAC Bank coming to BRAC, a charitable institution, will be taxed under Income Tax Act or not. Therefore, the Court should not unnecessarily bur-

den itself, at this stage, with the questions of Income Tax, Bankruptcy, etc. In continuation with his argument he has further submitted that the foreign donations to NGO's are diminishing rapidly. At present foreigners are very reluctant to provide money and has already given indication that donations from them will diminish further in future. In view of the above, Government has recently issued a circular No. ERD/NGO-11/SC/86/586 dt. 3.9.86 to all the NGOs asking them to generate income from their own source. With that in view BRAC has embarked upon banking business so that when foreign donations deplete it may still be able to continue with its charitable activities. He has further submitted that BRAC Bank is a separate entity from its share holders. The shareholders may be BRAC employees or BRAC itself but because of the very nature of the Bank Companies Act, 1991, which does not give more than 5% voting right to anyone shareholder, none will be able to control the affairs of BRAC Bank whatever may be its composition.

20. By referring to the Audit Report of BRAC, Annexure 5, he has shown us that from 100% donor dependency in the past BRAC has now transitioned itself to less than 40% donor dependency for its budgetary requirement. He submits that if the linkage is now broken it would upset the entire system upon which BRAC is now running. Mr. Ishtiaque Ahmed has then, by referring us to section 2(2) of the Companies Act, has submitted that only a company can be a subsidiary company to another company and not a society. Therefore, the question of lifting the veil of incorporation is not appropriate in the instant case, as one of the two concerned entities is a society and the other one is a company. The main purpose to go behind the veil of incorporation, according to him, is to dis-

cover the individual or to find whether an entity is a separate entity or one of a group to fix who is liable for taxation or who is entitled to trade mark and not to see whether a society registered under the Societies Registration Act is the holding entity of another company. He has then pointed out that even in England the law regarding lifting of veil of incorporation has not yet been fully evolved.

21. Syed Ishtiaque Ahmed, the learned Counsel, has then challenged the standing of the petitioner by submitting that he might be a nationally and internationally known personality but to come before this court, invoking the writ jurisdiction under Article 102 of the Constitution, one must be a directly aggrieved person. He agrees that the door which has long been closed to others has been made ajar by the Appellate Division in the case of Dr. Mohiuddin Farooque Vs. Bangladesh reported in 49DLR(AD)(1997)1 to espouse the cause of any indeterminate group of people who are unable to come to this Court because of their poverty and other incapacity. But the petitioner here is not espousing the case of any such indeterminate group of people but has come to protect the interest of a vested group. Therefore, the court should discharge the rule in limini. Lastly, he submits that the petitioner is guilty of laches. He is so indolent that he has come before this court at the last moment when the bank is going to start its business by opening its branch at Gulshan.

22. On a thorough consideration of the submissions of both sides it appears to us that the basic question involved here is that whether BRAC, a society registered under the Act, specially in reference to its section 20, to create, promote and sponsor a banking company. Because of the novelty of the question, we felt that some amicus curiae should be

appointed and requested to assist us on this point. Accordingly, this Court asked Mr. Rafiq-ul-Huq, Dr. M. Zahir, Mr. K.S. Nabi and Mr. Mahmudul Islam, the learned Counsels, to appear, address and assist this Court as amicus curiae on the point whether a society registered under the Societies Registration Act, can start banking business by purchasing shares in it and whether the impugned letter of 'no objection' issued by the Bangladesh Bank and Certificate of Incorporation by the Registrar, Joint Stock Companies were done legally. Accordingly they appeared and addressed us with their valuable opinion.

23. Mr. Rafiq-ul Huq, the learned amicus curiae, while discussing the nature of a society has stated that a society registered under the Societies Registration Act is a legal entity who can sue and can be sued in its name, but its properties are held in the name of its office bearers or trustees. In support of his contention that a society is a legal entity he has referred to AIR 1946 Bombay 516, AIR 1941 Bombay 312, AIR 1970 Patna 163, AIR 1950 Allahabad 480, AIR 1958 Andopradesh 773 and an unreported decision of our Court held in the Matter No. 42/85 in which the learned Counsel himself appeared. He then by referring to section 20 of the Societies Registration Act, has stated that this section should be read with section 1 of the same Act and a society should be read more as a company. But did not cite any decision in this connection. On the point of ownership of BRAC Bank he has submitted that under the general provisions of the company law, BRAC Bank will be considered as a separate entity and its own owners and not BRAC as its owner, which only holds shares in the Bank. On the question whether BRAC Bank is a subsidiary company to BRAC or whether it will be controlled by the latter, he has submitted that this is a ques-

tion of fact which the court shall have to decide on its own. However, he has pointed out that the nature of the Bank Companies Act, 1991, is such that no one will be able to control BRAC Bank even if a share holder owns 99% shares, as is the case here with BRAC, because the voting right will be restricted to 5% under section 14(f) of the said Act. On the question of holding shares upto 99% of BRAC Bank by BRAC, in excess of 10% restriction under section 14A of the Bank Companies Act, he said it will depend upon whether the restriction has been waived under section 121 of the said Act, as was done by the Government by gazette notification in the cases of Rawalpindi Bank, Arab Bangladesh Bank and Dutch Bangladesh Bank.

24. Dr. M. Zahir, the learned amicus curiae, at the very beginning, has drawn our attention to several developments that had taken place before the issuance of the letter of 'no objection' by Bangladesh Bank, indicating that thereby the dictates of section 14A of the Bank Companies Act have not been exactly followed with a deliberate intention to accommodate a particular party. This has been done in disregard of the very intention for which section 14A has been incorporated and thus the letter of 'no objection' issued by the Bangladesh Bank is vitiated. Dr. Zahir has then submitted that before giving 'no objection' to the registration of BRAC Bank, Bangladesh Bank must have gone through the Memorandum and Articles of Association of BRAC Bank. If it had only scrutinized it carefully it would have been apparent that there is a breach of section 14 of the Bank Companies Act, as the paid up capital is less than one-half of the subscribed capital. He has also submitted that the Bangladesh Bank did not apply its mind but violated not only section 14A but also section 14 of the Bank Companies Act,

while issuing the letter of 'no objection'. On the question whether BRAC, as a registered society can legally commence banking business, he is emphatic in his submission that a society registered under the Societies Registration Act cannot invest money in commercial enterprise. Such a commercial undertaking will be contrary to the objects laid down in section 20 of the Act, which restricts the operative field of a society to a very limited territory. Only possible fields for investment open to it, according to him, are bonds and securities and in comparable domains. He further submits that section 20 of the Societies Registration Act and Article 3(1), the main object clause of BRAC, if read together, will make sub articles (iv-x) and (xv) of Article 3 of BRAC, particularly sub Article (xv) that allows investment, ultravires the Societies Registration Act. In this connection he has suggested the lifting of veil of incorporation of BRAC Bank to find out who is the real owner of it or who will control the Board of BRAC Bank.

25. Mr. K. S. Nabi, another amicus curiae, has submitted, that as the license to operate has already been given to BRAC Bank, the starting of its operation should not be preempted at this stage, specially when an alternative remedy of winding up of the bank is available under section 65 of the Bank Companies Act.

26. Mr. Mahmudul Islam, the other learned amicus curiae, sees no dearth in BRAC's competency to invest in BRAC Bank, as the Societies Registration Act, 1860, puts no statutory limitation on it. He argues that in the absence of such limitation in the statute it will depend on BRAC's charter, which, if, allows investment, BRAC will be competent to invest money in a commercial

enterprise like BRAC Bank. He has then referred to Article 3(xv) of BRAC, that specifically allows to invest and deal with the money of the society in such manner as may from time to time be determined. Therefore, neither the statute nor the charter of BRAC imposes any deterrence on BRAC's right to invest in a bank. He also does not find violation of section 14A so far as restriction on holding of not more than 10% shares of a bank is concerned as it has already been waived. Mr. Mahmudul Islam then argues that the shareholders of BRAC Bank should be considered as individuals and not as agents, servants or paid employees of BRAC. By referring to section 37 of the Companies Act, he has submitted that the court should take to sensible as real and no notice of any trust, expressed, implied or constructive shall be unnecessarily taken. There is nothing to show here that the shareholders of BRAC Bank are agents or servants of BRAC. Moreover, section 37 of the Companies Act provides no bar for a society to hold shares, and in case of Islamic Bank shares are actually held by some charitable societies. Mr. Mahmudul Islam then referred to AIR 1989(SC) 2105, to contend that for invoking the writ jurisdiction on the ground of infringement of fundamental right, the pleading must be elaborate and show how the discrimination has been made, so that the other side may controvert, but there is no such foundation in this case. In the absence of any irrational classification, based on facts in the pleading, any differentia made on rational basis will come within the permissible criteria. Lastly, he has urged upon the Court not to extend locus standi any further, as Article 31 of the Constitution only applies to natural born person and not to legal entities like a society. Even then, none of the societies came before this court, challenging the registration

of BRAC Bank. Whenever the right person is not coming the question should be asked, why the right person is not coming and the petition should be rejected on the ground of locus standi of the petitioner.

27. While considering the appointment of *amicus curiae*, we have already expressed our view that the issue that appears to this court to be fundamental in this case, concerns the legal capacity of BRAC, a society, registered under the Societies Registration Act, to own a subsidiary banking company, a commercial enterprise run for profit. The petitioner questions this by challenging the legality of the no objection certificate, Annexure-A, issued by Bangladesh Bank and the registration and certificate of incorporation of BRAC Bank vide Annexures-C & C1 by the Registrar of the Joint Stock Companies without applying their minds to this basic question. Assertion being made that who a society is registered under the Societies Registration Act, it comes within the ambit of section 20 of the Act that is basically charitable and not profit making in nature. For such a society to start commercial enterprise like a bank to earn profit, will be ultra vires the said section.

28. The Societies Registration Act provides for registration of literary, scientific, and charitable societies and the objects of the Act are stated in the preamble. It is to make provisions for improving the legal condition of such societies established for the promotion of science, literature, the fine arts, the diffusion of knowledge or for charitable purposes. Under the provisions of this Act seven or more persons may form a society, for any purpose or purposes described in section 20 of the Act, by subscribing their names to the memorandum of association and filing the same with the Registrar of Joint Stock Com-

panies. The property belonging to the society will be vested in the governing body of the society or to its trustees. A society enjoys the status of a legal entity apart from the members constituting the same and is capable in suing or being sued.

29. In view of the above, section 20 of the Societies Registration Act falls for consideration. Section 20 of the Societies Registration Act is as follows:-

"The following societies may be registered under the act: Charitable societies, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs."

30. Since its initiation in 1860 this Act was amended only twice, first in 1927 during the British period and then in Bangladesh in 1978. The amendment made in 1927 was in respect of section 20 of the Act by which, 'diffusion of political education' was added as one of the purposes for which a society established may be registered under the Act. As a result the section almost remained intact in Bangladesh. The same is the case in Pakistan. In India, it took a different course and amendments of section 20 of the Act have been made in different states by state legislations and also by Union Act to include new purposes for which societies may be formed and registered under the Act. The amendments are as follows:-

(1) Bihar-Bihar act 2 of 1960, s.6. In its application to the State of Bihar, in S.20 after the words "science, literature" insert the words "industry, agriculture".

(2) Haryana-Haryana Act 23 of 1974, S. 2 In its application to the State of Haryana, in S.20 for the words and sign "instruments or designs promotion of the interest or welfare of the public and any other object as may be notified by the Government as beneficial to the public"

(3). Maharashtra-Bombay Act 76 of 1958, S.2(A) Notwithstanding anything contained in sub-section (1) any society registered under the Public Societies Registration Act for any public or religious purpose and operating in the Hyderabad area of the State of Bombay of the Societies Registration (Bombay Extension and Amendment) Act, 1958, shall be deemed to be and continue to be registered under this Act,"

(4) Uttar Pradesh-U.P Act 11 of 1984, S.7 In its application to the state of Uttar Pradesh in S.20 after the words "established for the promotion of" and before the word "science" insert the words "Khadi and village Industry, Panchayat Industry, Rural Development."

(5) Union Territory Amendment of section 20 (AIR manual 4th edition at PP 805-806) 1. Delhi-Act 26 of 1983, S. 20 In its application to the Union Territory of Delhi, in S. 20 for the words "Promotion of Science, literature, or the fine arts" the following words are substituted "promotion of social welfare, activities conducive to the protection and improvement of the natural environment (including forests, lakes, rivers and wild life) compassion for living creatures, literature, science, sports, games or the fine arts."

(6) Pondicherry-Pondicherry Act 9 of 1969 In its application to the Union Territory of Pondicherry, in S.20 after the words "instruments or designs" words "the dissemination of social economic education; promotion of the interest or welfare of the public or a section of the public or a non-trading associations with objects confined to the Union Territory and any other objects as may be notified by the Government as being beneficial to the public or to a section of the public" are inserted.

31. From the above it seems that in India it was thought necessary to include new or additional purposes to section 20 of the Societies Registration Act 1860 by legislative enactment both Provincial and Union to meet new demands of time.

32. From the affidavit-in-opposition filed by the Respondent Nos. 4-10 it appears that BRAC is also registered under the Foreign Donations (Voluntary Activities) Regulation and Control Ordinance, 1978 read with amendment made in 1982. Because of its particular relevance in this case it is essential to consider sub section (a) and (d) of section 2 of the Ordinance. Under sub section (a) what is Foreign Donation is set out whereas sub section (d) defines voluntary activities. In this sub section what sort of activities to be undertaken with foreign donations, received by an organisation in Bangladesh, are clearly enumerated in following terms:

Section 2(d) "Voluntary activity means an activity undertaken or carried on partially or entirely with external assistance by any person or organisation of his or its own free will to render agricultural, relief, missionary, educational, cultural, vocational, social welfare and developmental services and shall include any such activ-

ity as the Government may, from time to time, specify to be a voluntary activity."

33. Clause (d) of section 2 of the aforementioned Ordinance defines precisely the scope of voluntary activities for which the Foreign Donation is provided. It comes in the form of a list of activities described as voluntary activities. This Ordinance was amended in 1982 which is fact is directed towards the activities specified in clause (d) by inserting the words "partially or entirely with external assistance" after the words "carried on."

34. Interpretation of the aforesaid section 20 of the Societies Registration Act and section 2(d) of the Foreign Donation Ordinance, 1978 and determination of their scopes have become imperative because of the contention raised by the petitioner as to the legality of the impugned orders vis-a-vis these sections. We have a situation here that has to be interpreted and determined in terms with the law of this country. The cardinal principles of interpretation of a statute which have been laid down by our court way back in 1957 in the reference by the President, reported in 9 DLR (SC) 178, in sum, is that to give effect to the intention of the legislature in enacting a statute, plain and ordinary meaning shall have to be given so that they cannot be read in any way to extend its meaning or to exclude a part of it, in other words a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made.

35. Moreover, it is necessary to keep in mind the rule of ejusdem generis, for interpreting a statute or a particular section of a statute. The rule is that where particular words forming part of the same classes of persons, things or subjects are followed by general words then the general words will normally be construed to include only those persons or

things of the same class and of the same nature as those precisely enumerated in the particular words. However, it may be remembered that as a rule of construction the ejus-dem generis rule must be applied with caution and subject to the primary rule that statutes are to be construed in accordance with the intention of Parliament.

36. A scrutiny of section 20 of the Societies Registration Act and section 2(d) of the Foreign Donation (Voluntary Activities) Ordinance will establish that the purposes for which a society is registered under the Act and assistance is given to an organisation under the Ordinance, are basically non-profit making and voluntary in nature. They can engage in activities with service oriented zeal to the community without entering into purely commercial venture.

37. Article 3(1) of the Memorandum of Society of BRAC which lays down the paramount object of the society also stresses that it would "engage in charitable purposes and social welfare activities strictly on non-profit basis." It seems, by their own declaration, BRAC is not to undertake profit making commercial enterprises.

38. BRAC has already approached this Court in the Reference Application Nos. 79 and 80 of 1995, Annexure 4 to the affidavit-in-opposition by the Respondents Nos. 10 arising out of I.T.A. Nos. 551 & 552, to find out whether a charitable society is liable to pay income tax. A Division Bench of this court comprising of Mr. Justice Mahmudul Amin Chowdhury and Mr. Justice Md. Abdul Aziz acting on those applications of BRAC, held that it is wholly a charitable trust and its incomes are distributed only for charitable purposes and therefore, their incomes of the concerned years are not taxable. The question that was addressed by the court in that case was on a limited point whether profits earned

by 'BRAC Printers Ltd'. and 'Aarong' owned and run by BRAC, were exempted from Income Tax. And it was held that as long as such incomes were used for charitable purposes they were exempted. The court did not find any reason to believe that profits thus earned were being used for purposes other than charitable.

39. The contentious point in that case is not per *in curiam* with what is in dispute here in this case in its writ jurisdiction. Before us is challenged the legality of purchasing shares in a banking business by a society, registered under the Foreign Donation (Voluntary Activities) Ordinance 1982. This question was not address by the Division Bench in the two Reference cases, as it was not an issue before them. However, what is important for us, is the finding by the court in the two Reference cases, is that BRAC is definitely a charitable trust.

40. A charitable and social welfare society has some special attributes and imperatives which make it different in nature from other institutions or organisations. To gain an appreciation of its functional operation, some of its attributes may be evaluated, by a deliberation on them.

41. What do the words 'charitable' purposes denote, has elaborately been dealt with by the courts of this subcontinent in different cases. In a wider sense, it is understood that a society whose object is to take preventive measure to ward off pecuniary wants, would be a charitable society within the Act (Asalata Roy V Society for the Protection of Children of India 51 C.L.J 272) or a society formed for religious purposes would ordinarily be one for charitable purposes, or there can be a society, the paramount object of which is charitable but some of the objects are not strictly charitable (Anjuman Islamia of Muttara V. Naziruddin, 28 All 384).

42. A charitable and social welfare society is in essence non profit making, but, commercial activities which are incidental to the purpose of the society for which it is established may be permissible, keeping in mind that in case of society registered under the Societies Registration Act, 1860, there is always a reference to section 20 of the Act.

43. Dissolution of a society depends on its members. Upon the dissolution of a society to which the Societies Registration Act is applicable, property remaining after satisfying all debts and liabilities, will not be divisible among the members, but must be given to some other kindred societies. This rule, however, does not apply to a society founded or established by the contributions of shareholders in the nature of a joint stock company.

44. A society does not have to pay income tax under the provisions of the Income Tax Act.

45. A society is not open to alteration of its fundamental principles upon which it is based by its majority members. They can only alter the laws or make new laws so far as might be consistent with the purposes of the society for which it has been established.

46. Mr. Ishtiaq Ahmed, the learned counsel, has ardously argued that a society can do any lawful business to bring profit as long as the profit, does not go to its members but remains charitable. In this connection he has referred to an observation by Lord Denning in the case of National Deposit Friendly Society Trustees v Skegness All E.R. 1958 (2) page 602 relevant page 612 wherein a distinction has been made between activities, 'conducted for profit' and 'conducted for the purpose of making profit'. It is observed, "But the fact that the society has made profits does not mean that it is 'conducted for profit which I take to mean 'conducted for the purpose of

making profit'. Mr. Ahmed has asserted that even if the investment of funds is not one of the objects properly so called such investment by a society will be only a means of achieving those objects and 'conducted for the purpose of making profit'.

47. Mr. Tawfique Nawaz, on the other hand, submits that unless the Memorandum of Association of a society provides an express provision giving legal validity to the purchase of shares in a banking company, a society is barred from doing so. He then points out that the Memorandum of Association of the Respondent No. 4 does not specifically provide that it may invest in purchasing shares of a corporate entity, whether a banking company or not.

48. It appears that where a company had among its objects the authority to ply ferry service, it was held ultra vires to run excursion service. (Trustees of the Harbour of Dandy Vs. D and J. Nicol and others 1915 AC 550). Similarly, where a company was provided amongst its objects to run railway service, it was held ultra vires for the company to run an omnibus (Attorney General and others V Mercy Railways, 1 Chancery 1907 page 616 C.A.) Even a company must have in its Memorandum and Articles of Association an express provision to purchase shares in another company, otherwise it will not be legally allowed to do so (Land Allotment Company case (1894) 1 Ch 81 H.L 617). Again convenience cannot justify the undertaking of an activity not expressly stated among its objects (Guinness Vs. Land Corporation of Ireland (1882) 22 Ch. D. 349. The ultra vires doctrine does not, however, extend to the activities incidental to the object clause.

49. The case references given above by Mr. Nawaz are regarding companies. Within

the structure of companies there, created either by statutes or by their object clause. Similarly, their are different kinds of societies, even though they might all be registered under the Societies Registration Act. But one kind of societies cannot undertake the activities of another kind of societies, designated to it by law.

50. The logical corollary from this will be that, the activities which may be undertaken by societies are vastly separable from those which may be undertaken by the companies. The divide is created by the different pulpits upon which they stand. A society is a creature under the Societies Registration Act, whereas the other is a creature under a different Act, e.g., the Companies Act, the Bank Companies Act, etc. As a result, their profiles remain different and their activities remain captive to their respective domains, they tread on their own terrain quite different from each other. Exception to this general principle may be found in case of empowerment of a society by legislation. In England there are societies which are empowered by statutes like the House Building Societies Act and Industrial and Provident Societies Act to undertake commercial activities and even banking, subject to special provisions.

51. What we are trying to stress is that unless otherwise authorised, no new territory can be included in section 20 of the Societies Registration Act, 1860 and section 2(d) of the Foreign Donations Regulation Ordinance, 1978, which specifically provide for a society to engage in the fields set out therein and they do not contemplate undertaking of investment of money in purchasing shares in a corporate entity like a banking company. It may be noted that the case of Grameen Bank is different as it is a creature under an Ordinance.

BRAC is neither empowered by any legislation, nor allowed by its Memorandum and Articles of Association, nor authorised by the Societies Registration Act nor by the Foreign Donation (Voluntary Activities) Regulation Ordinance, 1978, to buy shares to own, promote or control a bank. Article 3(xv) of the memorandum of BRAC allows it to invest and deal with the money of the society as may from time to time be determined, but none of its objects clause specifically allows purchase of shares. We have already seen in Land Allotment Company case, referred to above, that in the absence of such an object, specifically mentioned in its memo, even a company, not to speak of a society, cannot purchase shares.

52. We fail to agree with the submission that Article 3(xv) consents to purchase of shares by BRAC. In such a case, we shall be in full agreement with Dr. Zahir, the learned *amicus curiae*, that clause (xv) of Article 3 will be ultra vires of section 20 of the Societies Registration Act. Allowing BRAC to purchase shares of BRAC Bank will cause a metamorphosis, changing BRAC from a society to a company which is not legally allowed. Not only that, there will also be probability of plethora of laws, like Bankruptcy Act, Income Tax Act, etc. coming into conflict with the Societies Registration Act, resulting in serious legal complications in future. From the records of Bangladesh Bank produced before us, we also find the same questions deliberated by the authorities concerned for the past several years.

53. At this stage it may be queried why should purchase of shares of BRAC Bank by BRAC change the nature of the latter when they are two completely different entities, nothing to do with each other? But is it really so? Isn't it the perfect situation for disregard.

ing the concept of corporate entity as laid down in Solomon's case (1897 Appeal Cases 22), to find the economic realities, whether BRAC and BRAC Bank will be parts of the same economic unit? In a series of cases starting from the Roberta (1937) 58 LIL. Rep. 159, to D.H.N. Food Distributors Ltd. V. Tower Hamlets L.B.C. (1976) 1 W.L.R. 852 C.A. the British courts, by resorting to lifting the veil of incorporation, have come to recognise the essential unity of a group enterprise, rather than the separate legal entity of each company within the group. In India the same principle is followed in the cases of I.T. Commr., Madras v. Meenakshi Mills Madurai, AIR 1967 (SC) 819 and Delhi Development Authority V. Skipper Construction Co. AIR 1996 (SC) 2005 and in Bangladesh it has been followed in the unreported appeal from Original Order Nos. 138 & 139 of 1981, converted into Civil Revisions 105(C) & 106(C). In the United States the courts willingly lifted the veil of incorporation whenever it is used to defeat public convenience, justify wrong, protect fraud or defend crime (United States V. Milwaukee refrigeration, 142 Fed. 247 (1905).

54. The circumstances, under which the fundamental principle of corporate entity as laid down in Salomon's case may be disregarded, are many, one of which is to find whether there exists the relationship of holding and subsidiary companies, among a group of companies. It will be seen that the Companies Act of Bangladesh by incorporating section 2(2) in it has gone to certain extent the same way towards treating all companies within a group as part of the same economic unit.

55. The two fold tests to establish that a company is subsidiary to another are whether the holding company is a member of the sub-

sidiary company and controls the composition of its board of directors or the holding company holds more than half of its equity capital. In order to apply these tests in the instant case, reference may be made to Annexure-2 of the supplementary affidavit-in-opposition, filed on behalf of the Respondent Nos. 4-10, which contains the minutes of a special meeting of BRAC held on 15, June 1992 at BRAC Head Office. It gives the names of the general members of BRAC attending it. A comparison of it with the first Board of Directors of BRAC Bank, given at running page 61 of the writ petition, will show that the Directors of BRAC Bank who are, 1) Mr. F.H. Abed, 2) Mr. Syed Humayun Kabir, 3) Mr. A.S. Mahmud, 4) Dr. Salehuddin Ahmed and 5) Mr. Aminul Alam were all present in the aforesaid special meeting of BRAC as its general members. It is also stated by the petitioner and not controverted by the respondent that most of them are also employees of BRAC.

56. As regard the share capital holding of BRAC in BRAC Bank it will be sufficient, for the present, to remember that BRAC holds more than 99% shares in BRAC Bank, the rests are held by other persons who are not only members of BRAC but also its employees. In a latter paragraph we have discussed this in extenso. It is argued that the scheme of the Bank Companies Act is such that no one will be able to control the Board of a bank as the voting rights of any one share holder under section 14(f) of the Act, do not exceed five percents of the total voting rights of all the shareholders. This is no doubt a good safeguard where the board of directors of a bank are different individuals or entities. But the case of BRAC Bank is different, the board here is composed of BRAC, represented by Mr. Abed, and some other individuals who