

Bombay High Court Salim Akbarali Nanji And Ors. vs Union Of India (Uoi) And Ors. And ... on 1 November, 2002 Equivalent citations: 2003 (2) BomCR 557, 2003 113 CompCas 141 Bom, 2003 48 SCL 1 Bom Author: D Bhosale Bench: R Lodha, D Bhosale JUDGMENT D.B. Bhosale, J. 1. In this group of writ petitions, the principal question that arises for our consideration is as to whether the Development Co-operative Bank Ltd. (respondent No. 10) initially registered under the Maharashtra Co-operative Societies Act, 1960 (for short, "the Societies Act"), and which is deemed to be registered under the Multi-State Co-operative Societies Act, 1984 (for short "the Multi-State Act"), could be converted into a joint stock (banking) company under the provisions of Part IX of the Companies Act, 1956 (for short, "the Companies Act"). 2. The petitioner, in all the four writ petitions, is common. The facts giving rise to these writ petitions are similar and the issues involved are also common, hence all the writ petitions are being disposed of by this common judgment. 3. The principal question that we require to decide in these writ petitions is mainly raised in Writ Petition No. 1443 of 1995 and our decision in this writ petition will decide the fate of other writ petitions also, hence we propose to deal with the said writ petition in detail. 4. The petitioner-Salim Akbarali Nanji appeared in person and efficiently argued all writ petitions at length. 5. The factual matrix giving rise to the first writ petition (Writ Petition No. 1443 of 1995) reveals as follows : (a) Initially, this writ petition was filed by three petitioners, viz., the Development Co-operative Bank Employees Union through its General Secretary, Shri Azim Akbarali Charania and Shri Salim Akbarali Nanji as petitioners Nos. 1, 2 and 3. Petitioners Nos. 1 and 2, however, were transposed as respondents Nos. 12 and 13 respectively by order of this court. Original petitioner No. 3 who will be hereinafter referred to as petitioner, alone contested present writ petition. (b) Respondents Nos. 1 and 2 are the Union of India and State of Maharashtra respectively. Respondent No. 3 is a statutory body registered under the Reserve Bank of India Act, 1934 (for short the "RBI Act"), which is having powers, inter alia, of issuing licences to banks and have over all supervision over the said banks. Respondent No. 4 is the Registrar functioning under the Multi-State Act who is empowered under Section 8 to issue certificate of registration under the said Act. Respondent No. 5 is the Registrar of Companies appointed under the Companies Act and who is empowered to issue certificate of incorporation to a company. Respondents Nos. 6 and 7 are authorities functioning under the provisions of the Societies Act. (c) The Ismallia Primary Credit Society and Masalawala Primary Credit Society were two independent primary co-operative credit societies which were managed by the Ismallia community. They were registered under the Bombay Co-operative Societies Act, 1925, which was subsequently replaced by the Societies Act, 1960. These two credit societies attained the status of co-operative banks, viz., Ismail Co-operative Bank Ltd. and the Masalawala Co-operative Bank Ltd. in 1951 and 1984-85 respectively. On June 30, 1981, both these co-operative banks were amalgamated under Section 17 of the Societies Act on a scheme of amalgamation. The amalgamated bank was known as Development Co-operative Bank Ltd. (respondent No. 10). (d) The Multi-State Act, came into force on

September 16, 1985, and as a result of which respondent No. 10 was deemed to be registered under the provisions of the said Act as the area of its operation was extended to Maharashtra and Andhra Pradesh. Respondent No. 11-bank is the Development Credit Bank Ltd.—a joint stock (banking) company registered under the Companies Act and has been converted from respondent No. 10-Co-operative bank. (e) The petitioner was a member/shareholder of respondent No. 10-bank and is now a shareholder of respondent No. 11-banking company. (f) It is the case of the petitioner that when he came to know that respondent No. 10 had an intention of converting itself into a joint stock banking company, he addressed a letter to respondent No. 3 expressing therein that conversion would affect the interest of the employees and shareholders of respondent No. 10. (g) On January 17, 1995, respondent No. 10 despatched a notice dated January 9, 1995, to its shareholders and convened a special general meeting on January 28, 1995, to consider the conversion of respondent No. 10-bank registered under the Multi-State Act into a joint stock banking company under Part IX of the Companies Act. (h) According to the petitioner the period of notice was extremely short and the meeting was conducted a high-handed manner and the resolution was passed by a show of hands in the meeting held on January 28, 1995, by which the general body decided to convert respondent No. 10-bank into a joint stock banking company (respondent No. 11). (i) Respondent No. 11 immediately in February, 1995, filed with the Registrar of Companies (respondent No. 5) Forms Nos. 37, 40 and 41 of the Companies (Central Government's) General Rules, 1966, along with the resolution passed at the special general meeting for its registration as a banking company. (j) Before we proceed further, we may note that the petitioner had filed a dispute before the co-operative court (respondent No. 8) challenging the notice dated January 9, 1995, by which a special general meeting was convened to pass the aforesaid resolution. The co-operative court by its order dated January 27, 1995, in Dispute No. CC1/95 of 1995 had restrained respondent No. 10 from adopting the resolution mentioned in the notice dated January 9, 1995. Respondent No. 10 preferred an appeal against the aforesaid order dated January 27, 1995, before the co-operative appellate court (respondent No. 9) being Appeal No. 38 of 1995. The co-operative appellate court by its order dated January 28, 1995, allowed respondent No. 10 to hold a special general meeting but it was made clear that the resolution, if any, passed in the said meeting dated January 28, 1995, would be subject to further orders of respondent No. 9, the appellate court. Accordingly, in the special general meeting, members of respondent No. 10 passed the resolution by which respondent No. 10 was resolved to be converted into a banking company. The appeal which was pending before the Co-operative Appellate Court was thereafter decided by respondent No. 9 on March 10, 1995, and by its order it directed the co-operative court (respondent No. 8) to decide the dispute on the merits within a period of two months from the date of the aforesaid order. It was also made clear that the implementation and execution of the resolution passed in the special general meeting would be subject to final decision of Dispute No. CC1/95 of 1994 pending before the co-operative court. (k) Respondent No. 10 after passing of the resolution issued a public notice on

May 31, 1995, in a local newspaper dated June 1, 1995, thereby giving notice to all shareholders, depositors, creditors, customers and constituents that the conversion of respondent No. 10-Development Co-operative Bank into a joint stock banking company (respondent No. 11) was effective from close of business on May 31, 1995, and it would become operative on opening of business on June 1, 1995. (1) It may be further noted that the Reserve Bank of India-respondent No. 3 (for short, "the RBI") by letter dated January 2, 1995, had conveyed their "in principle" approval to the Development Co-operative Bank Ltd. (respondent No. 10) to convert itself into a joint stock banking company subject to the terms and conditions as set out in the annexure to that letter. Respondent No. 10-bank was also informed that it might approach the Reserve Bank of India for a banking licence under Section 22 of the Banking Regulation Act, 1949 (for short, "the Banking Regulation Act"), after all legal formalities for conversion of the Development Co-operative Bank Ltd. were complied with. (m) It appears that the Joint Secretary, Ministry of Law (Department of Company Affairs) informed by his letter dated May 26, 1995, to the Regional Director of Registrar of Companies that there should be no objection to the registration of the Development Co-operative Bank Ltd. as a company under Part IX of the Companies Act, 1956. Accordingly, in response to the application made to the Registrar of Companies in Forms Nos. 37, 40 and 41 of the Companies (Central Government's) General Rules and Forms, 1956, the certificate of incorporation bearing No. 11-89008 of 1995, dated May 31, 1995, was issued by respondent No. 5. As a consequence of issuance of the certificate under Part IX of the Companies Act, the Development Co-operative Bank Ltd. (respondent No. 10) stood converted and incorporated as a joint stock banking company under Part IX of the Companies Act, 1956. Resultantly, the assets and liabilities of respondent No. 10 also stood vested in respondent No. 11. (n) The Reserve Bank of India also in exercise of powers conferred under Section 22(1) of the Banking Regulation Act, 1949, granted a licence in favour of respondent No. 11 to carry on banking business in India subject to the conditions mentioned in the office letter dated May 31, 1995. (o) Respondent No. 11 immediately thereafter issued a circular to all its all branches informing them about conversion of the co-operative bank into a joint stock banking company and also took further steps which were necessary to inform all others concerned. (p) The Union of India (respondent No. 1) issued Notification No. OBD BR 127/16.05.00/94-95, dated May 31, 1995, and deleted respondent No. 10 from the Second Schedule, as per Section 42(6)(b)(iii) of the Reserve Bank of India Act. The Union of India thereafter on June 1, 1995, issued another notification at the behest of the Reserve Bank of India for inclusion of respondent No. 11-bank in the Second Schedule as per Section 42(6)(a) of the Reserve Bank of India Act. (q) As a consequence of the aforesaid developments, respondent No. 11 on June 26, 1995, issued a letter to all its shareholders to deliver their share certificates issued by respondent No. 10 for endorsement that those are now shares of respondent No. 11. (r) This may also be noted that the Divisional Joint Registrar, Mumbai Division, a delegate of the Central Registrar under Section 45 of the Multi-State Act issued a show-cause notice on June 29, 1995, to respondent No. 10 seeking an expla-

nation as to why management of the bank should not be taken over. The bank preferred a revision application before the Joint Secretary to the Government of India against the said show-cause notice under Section 92 of the Multi-State Act. These proceedings, however, were concluded by order dated January 18, 1996, passed by the Secretary of India remanding the matter to the Joint Registrar of the Co-operative Societies, Bombay Division. The whole issue, however, was challenged by way of Petition No. 327 of 1996 in the Delhi High Court and has been concluded on May 24, 2001. 6. It is in this background, the petitioner has filed the writ petition bearing No. 1443 of 1995, challenging the legality and propriety of the certificate of incorporation dated May 31, 1995, issued by respondent No. 5 (exhibit J), letter of "in principle" approval dated January 2, 1995, issued by the Reserve Bank of India (exhibit M), notification dated June 1, 1995, granted by respondent No. 3 under Clause (a) of Sub-section (6) of Section 42 of the Reserve Bank of India Act (exhibit N) and the letter dated June 26, 1995, issued by respondent No. 11 informing conversion of respondent No. 10 to all its shareholders (exhibit O). The petitioner has also sought direction to respondent No. 3 to withdraw and/or cancel the permission granted by respondent No. 3 by the aforesaid letter (exhibit M). Notification (exhibit N) and further direction to respondent No. 5 to withdraw the certificate (exhibit J) and the letter (exhibit O). 7. After filing of the writ petition (No. 1443 of 1995), Ministry of Agriculture, Government of India, by notification dated August 31, 1995, in exercise of powers under Sub-section (2) of Section 99 of the Multi-State Act, exempted respondent No. 10-bank from the applicability of the provisions of Section 102(1) of the said Act and in view thereof issued letter dated September 7, 1995, to respondent No. 11 informing that consequent upon its registration as a joint stock banking company, the Development Co-operative Bank Ltd. (respondent No. 10) had ceased to exist as a society under the Multi-State Act from the date of registration under the Companies Act, 1956. In view of this development, the petitioner amended the writ petition and challenged the said notification dated August 30, 1995 (exhibit S), and the letter dated September 7, 1995 (exhibit I). 8. By order dated August 8, 1995, rule came to be issued in the present writ petition. In so far as interim relief is concerned, this court made following observations, in paragraphs 11 to 16 which read thus : Hence, prima facie, it appears that the company and the co-operative society are different entities. At this stage it would be difficult to accept the contention that the co-operative society can be converted into a company by resorting to the provisions of Section 565(b) of the Companies Act. However, this requires detailed consideration. 9. In view of the aforesaid discussions and submissions made by learned counsel, the matter requires admission. 10. Hence, rule. 11. Learned counsel for the petitioners has vehemently submitted that interim stay as prayed for be granted, otherwise the petitioners would suffer irreparable loss and that the entire society would be converted into a company which cannot be undone subsequently. As against this, learned counsel for the bank submitted that at present the court may not grant any interim relief as prayed for because proceedings are pending before the co-operative court as well as with the Joint Registrar, Central Government, who is hearing the interim application.

He further submitted that the co-operative society at present is registered as a company. The dispute is pending before the co-operative court at Bombay and in appeal filed by the Development Co-operative Bank, the appellate authority has directed the learned judge to decide the dispute on merits within a period of two months from the date of the order. The said order was passed on March 10, 1995. 12. Considering the fact that the dispute is pending before the co-operative court at Bombay and the matter is pending before the Joint Registrar, Central Government, at present no interim relief need be granted. However, the aforesaid authorities are directed to dispose of the pending proceedings on merits at the earliest and, in any case, on or before October 10, 1995." 13. It appears that in pursuance of the direction given in paragraph 15, the dispute pending before the co-operative court was disposed of and ultimately culminated in the judgment and order dated October 16, 1996, passed by the co-operative appellate court which is a subject-matter in Writ Petition No. 2229 of 1996. In so far as the matter pending before the Joint Registrar, Central Government is concerned, as stated earlier, it had culminated in the order of remand and the whole issue has now been concluded before the Delhi High Court. 14. The main contesting respondent No. 11 controverted the case set up by the petitioner by filing five different affidavits from time to time. In short, it is stated in the affidavits filed by respondent No. 11 that it has been properly and lawfully converted from a co-operative banking society, previously deemed to be registered under the Multi-State Act, to the Development Credit Bank Ltd., a company duly registered under the Companies Act, vide certificate of incorporation bearing No. 89008 of 1995, dated May 31, 1995, issued by the Registrar of Companies (respondent No. 5). It is further stated that upon incorporation and registration of respondent No. 11-bank, the Reserve Bank of India has issued on May 31, 1995, the licence bearing No. BUN/59 to carry on banking business under Section 22 of the Banking Regulation Act. The Reserve Bank of India, vide Gazette notification dated June 1, 1995, directed inclusion of respondent No. 11-bank in the Second Schedule to the Reserve Bank of India Act in pursuance of Clause (a) of Sub-section (6) of Section 42. Respondent No. 11 has further defended that the certificate of incorporation is conclusive and final evidence as to the proper incorporation and conversion of the Development Co-operative Bank Ltd. into a banking company and now it is not open for the petitioner to challenge the validity of the said certificate of incorporation. The affidavit of respondent No. 11 further avers that the writ petition ought to be dismissed on the ground of delay and laches. It has also been stated that the petitioner is a shareholder of respondent No. 11-bank and he has attended five annual general meetings held on September 30, 1996, September 30, 1997, September 30, 1998, September 30, 1999, and September 30, 2000, and by that estopped from challenging conversion of the Development Co-operative Bank Ltd. to a banking company. 15. The Reserve Bank of India filed in reply the affidavit of Smt. Sudha Damodar, Deputy General Manager of their Department of Banking Operations and Development. The stand taken by respondent No. 3 is that they are vested with duties and powers for the purpose of supervision and control of the banking system in India among other

general functions usually associated with central banking. The Banking Regulation Act, 1949, contemplates monitoring the affairs of banking companies by the third respondent which also exercises control over the management and conduct of the banking company. The affidavit further states that Section 22 of the Banking Regulation Act mandates that no company shall carry on banking business unless it holds a licence issued in this behalf by the Reserve Bank of India and in view thereof, in the present case, they did not go into the merits of the conversion of respondent No. 10 co-operative society into respondent No. 11-banking company. The Reserve Bank of India accepted the decision of respondents Nos. 4 and 5 as legal and valid and proceeded on that basis to consider the grant of a licence to carry on a banking business. It has been firmly stated by the Reserve Bank of India that it granted licence to respondent No. 11 only after satisfying that respondent No. 10 had complied with all legal formalities of its conversion. 16. In so far as other respondents are concerned, they have not filed any reply affidavits to the writ petition. However, except respondent No. 13, all other respondents have supported respondent No. 11. 17. We heard the petitioner—Shri Salim Akbarali Nanji in person, Mr. Chagla, learned senior counsel for respondent No. 11, Mr. Tulzapurkar, learned counsel for respondent No. 3, Mr. C.U. Singh learned counsel for respondent No. 12 and Mr. R.S. Desai, “A” Panel counsel for the State of Maharashtra for respondents Nos. 1 and 2 at length, perused the writ petitions and annexures thereto, affidavits filed by the respondents and went through the relevant provisions of various Acts referred to by the petitioner and the learned senior counsel and counsel appearing for the parties. In order to avoid repetition, we intend to refer to the submissions made by the petitioner, learned senior counsel and learned counsel appearing for the parties while dealing with the issues raised in the writ petition at the appropriate stage. 18. Before we advert to the principal issue raised in the instant writ petitions as to whether conversion of a co-operative bank registered under the Multi-State Act, into a banking company under Part IX of the Companies Act, is permissible in law we would like to examine the contention of the petitioner that the registration of respondent No. 1-bank itself is illegal and void. Mr. Chagla, learned senior counsel submitted that even if any irregularity in incorporation of respondent No. 11-bank was committed, the certificate of incorporation dated May 31, 1995, issued by respondent No. 5 is conclusive evidence that all requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto. 19. According to the petitioner, the Central Registrar, the Registrar of Companies and the Reserve Bank of India, by misconstruing and misapplying the provisions of the Multi-State Act and the Companies Act have illegally allowed respondent No. 11-bank to be registered as a company and carry on banking business. The petitioner took us through various provisions of the Multi-State Act and the Companies Act and submitted that the provisions of the said Act are contrary, inconsistent and incongruous with each other and in any case both the enactments cannot go together. To appreciate the arguments advanced by the parties and to find out whether incorporation of the Development Credit Bank Ltd. (respondent No. 11) is illegal or void, we would like to examine the

legality of the steps taken by respondents Nos. 10 and 11 from time to time in obtaining registration under Part IX of the Companies Act and licence under the Reserve Bank of India Act : (a) Respondent No. 10 came to be registered as a co-operative society on June 30, 1981, under the provisions of the Societies Act. The Multi-State Act came into force with effect from September 16, 1985. At that time respondent No. 10-bank was carrying on its business in the State of Maharashtra and Andhra Pradesh and, therefore, the Multi-State Act became applicable to it consequently under Section 103 read with Section 2(a) of the Multi-State Act, respondent No. 10 was deemed to be registered under the Multi-State Act. (b) Respondent No. 10-bank was a scheduled urban co-operative bank carrying on the business of banking under the provisions of the Reserve Bank of India Act and the Banking Regulation Act. Some time in 1994 respondent No. 10-bank proposed its conversion and registration as a joint stock (banking) company under the provisions of Part IX of the Companies Act. Accordingly, a scheme of conversion was prepared. (c) Respondent No. 10-bank filed an application before the Reserve Bank of India containing project report and details about its net worth seeking its approval for proposed conversion. (d) The Reserve Bank of India after an elaborate examination of the matter enjoined upon it under Section 22 of the Banking Regulation Act decided to grant its approval in principle to the conversion of co-operative bank into the Development Credit Bank Ltd. under the provisions of the Companies Act. (e) A perusal of Section 22 of the Banking Regulation Act clearly shows that no company would be able to carry on banking business in India unless it held a licence issued in that behalf by the Reserve Bank of India and any such licence could be issued subject to such conditions as the Reserve Bank of India may think fit to impose, (f) Respondent No. 10 also obtained approval to its conversion from the Government of India, Ministry of Finance vide letter dated December 9, 1994. (g) The impugned letter dated January 2, 1995, issued by the Reserve Bank of India and the “in principle” approval to the conversion of co-operative bank to the banking company reads thus : “RESERVE BANK OF INDIA, CENTRAL OFFICE, DEPARTMENT OF BANKING OPERATIONS AND DEVELOPMENT, CENTRE-1, WORLD TRADE CENTRE, CUFFE PARADE, BOMBAY-400 005. BP 1817/21.01.066/95 January 2, 1995.

The President,

Development Co-operative Bank Ltd.,

204, Raheja Centre,

Nariman Point,

Bombay-400 021.

Dear Sir,

Conversion of Development Co-operative Bank Ltd. into a joint stock banking company.

Please refer to your letter dated 20th June, 1994, regarding the above subject.

We hereby convey our “in principle” approval to the Development Co-operative Bank Ltd. to convert itself into a joint stock banking company subject to the terms and conditions as set out in the annexure to this letter. The new banking company shall, however, be incorporated only after its memorandum and articles of association are approved by us. 2. You may approach us for a banking licence under Section 22 of the Banking Regulation Act, 1949, for the new bank after all legal formalities in connection with conversion of the Development Co-operative Bank Ltd. into a joint stock banking company are complied with. It will have to be ensured that uninterrupted banking services are provided by the bank during the process of conversion. Yours faithfully, (Sd.) J.R. Prabha, Chief Officer." (h) Respondent No. 10 also approached the Registrar of Companies (for short, the RoC) and obtained confirmation vide letter dated January 13, 1995, to the effect, inter alia, that the banking company would bear the name Development Credit Bank Ltd.-respondent No. 10 thereafter gave notice dated January 9, 1995, to the shareholders for convening a special general meeting on January 28, 1995, whereunder a draft resolution proposed to be passed at the special general meeting was also communicated to its members. The notice dated January 9, 1995, issued by respondent No. 10 reads thus : DEVELOPMENT CO-OPERATIVE BANK LIMITED, 154, SARDAR VALLABHAI PATEL ROAD (EAST), DONGRI, BOMBAY 400009. Notice Notice is hereby given that a special general meeting of the members of the Development Co-operative Bank Limited will be held at Fidal Baug, Swami Vivekananda Road, Andheri (West), Bombay-400 058, on Saturday, January, 28, 1995, at 4.00 p.m. to transact the following business. To consider, and if thought fit, to pass with or without modifications, the following resolutions : Resolved that the Development Co-operative Bank Limited which is registered under the Multi-State Co-operative Societies Act, 1984, and has been duly authorised to do banking business as a scheduled bank included in the Second Schedule to the Reserve Bank of India Act, 1934, do apply for incorporation on behalf of its shareholders as a company under the name “Development Credit Bank Limited” limited by shares under the provisions of Part IX of the Companies Act, 1956, and to sign all necessary forms, give undertakings and declarations as may be necessary and to apply to the Reserve Bank of India for the issuance of a banking licence upon conversion in terms of the Scheme of Conversion “the Scheme”) forming part of this resolution ; Resolved further that the members do hereby approve and accept the scheme and the memorandum and articles of association a copy each whereof is placed before this meeting and initialled for the purpose of identification by the managing director. Resolved further that the board of directors are authorised to take such steps as may be necessary or desirable for implementing the scheme or modifying or varying the scheme or adopting different course of action or different order of priority but without changing the basic structure and notwithstanding the generality of the foregoing, the board of directors are authorised to apply to the Registrar of Companies under the provisions of Part IX of the Companies Act, 1956, on behalf of its shareholders, to sign application forms, give undertakings and declarations as may be necessary, apply to the Reserve Bank of India for a banking licence in terms of

its letter bearing No. BP. 1817/21.01.066/95, dated January 2, 1995. By order of the Board. Siddharth Sliholey, Managing Director and Chief Executive. Place : Bombay. Date : January 9, 1995. (i) At the special general meeting held on January 28, 1995, an overwhelming majority of shareholders appear to have passed the proposed resolution quoted in the aforesaid notice. Respondent No. 10 communicated the aforesaid development by its letter dated May 2, 1995, to respondent No. 4. Respondent No. 4 in turn by its letter dated May 16, 1995, informed that the matter relating to conversion of the Development Co-operative Bank Ltd. to a joint stock company had been examined by the Department of Agriculture and Co-operation and the Government had exempted the Development Co-operative Bank Ltd. from applicability of the provisions of Sub-section (1) of Section 102 of the Multi-State Act. (j) The Joint Secretary to the Government of India, Ministry of Law, Justice and Company Affairs (Department of Company Affairs) by its letter dated May 26, 1995, conveyed that there should be no objection to registration of the Development Co-operative Bank Ltd., which was registered under the Multi-State Act, under Part IX of the Companies Act. (k) Respondent No. 10 had earlier made an application to the Registrar of Companies in Form Nos. 37, 40 and 41 of the Companies (Central Government's) General Rules and Forms, 1956 and the Registrar of Companies had issued the impugned certificate of incorporation which reads thus : "CERTIFICATE OF INCORPORATION No. 11-89008 of 1995 I hereby certify that Development Credit Bank Limited is this day incorporated under Part IX of the Companies Act, 1956 (No. 1 of 1956) and that the company is limited. Given under my hand at Bombay this Thirty First Day of May One thousand nine hundred and ninety-five. (Sd.) (Y.M. DEOLIKAR), Addl. Registrar of Companies, Maharashtra." The certificate of incorporation was issued under Part IX of the Companies Act. Consequent upon incorporation of respondent No. 10-bank as a company under Part IX of the Companies Act and on issuance of banking licence, the appointed date under the scheme came into effect on May 31, 1995. Respondent No. 11, thereafter complied with other formalities. Respondent No. 11 addressed a letter dated May 31, 1995, to respondent No. 4 referring to exemption of applicability of Section 102 of the Multi-State Act and informing him of having been incorporated as company. Similarly, respondent No. 11 vide its letter dated May 31, 1995, addressed to the Reserve Bank of India surrendered the banking licence issued to respondent No. 10 for cancellation. The Reserve Bank of India in reply thereto informed respondent No. 11 about cancellation of the banking licence issued to respondent No. 10. Further, the Reserve Bank of India issued a notification dated June 1, 1995, whereby the Development Credit Bank Ltd. has been included in the Second Schedule to the Banking Regulation Act. The impugned notification dated June 1, 1995, reads thus : "RESERVE BANK OF INDIA, (DEPARTMENT OF BANKING OPERATIONS AND DEVELOPMENT), Notification, Bombay, the 1st June, 1995. Ref. DBOD No. BP 3284/21.01.066-95-in pursuance of Clause (a) of Sub-section (6) of Section 42 of the Reserve Bank of India Act, 1934 (2 of 1934), the Reserve Bank of India hereby directs the inclusion in the Second Schedule to the said Act of the following bank, namely :- 'Development

Credit Bank Ltd.’, A.P. Aiyer, Executive Director.” (1) The Government of India, Ministry of Agriculture (Department of Agriculture and Co-operation) issued a notification granting exemption from applicability of the provisions of Section 102(1) of the Multi-State Act on August 30, 1995. The impugned notification dated August 30, 1995, reads thus: NOTIFICATION New Delhi, the 30th August, 1995. S. O. No. 755(E), whereas Section 99 of the Multi-State Co-operative Societies Act, 1984 (hereinafter referred to as “the Act”), provides that the Central Government may, by general or special order, for the reason to be recorded therein, exempt a Multi-State Co-operative Society or class of such societies from any of the provisions of this Act; And whereas Sub-section (1) of Section 102 of the Act provides that the provisions of the Companies Act, 1956, shall not apply to the Multi-State Co-operative Societies : And whereas the Development Co-operative Bank has requested to allow to convert the bank into a banking company under the provisions of the Companies Act, 1956 : And whereas the matter has been examined and in view of potentialities to be realised by the bank after attaining the status of the banking company, it has been considered expedient to allow the bank to convert itself into a banking company : Now, therefore in exercise of powers under Sub-section (2) of Section 99 of the Act, the Central Government hereby exempt the bank from the applicability of provisions of Section 102(1) of the Act. (No. L-11011/2/95-L and M) Deen Dayal, Dy. Secy. (m) The Government of India by its letter dated September 7, 1995, informed respondent No. 11-bank that consequent upon its registration as a joint stock banking company by the name of Development Credit Bank, the Development Co-operative Bank Ltd. had ceased to exist as society under the Multi-State Act from the date of registration under the Companies Act. The impugned communication dated September 7, 1995, reads thus : GOVERNMENT OF INDIA, MINISTRY OF AGRICULTURE, DEPTT. OF AGRICULTURE AND CO-OPERATION, KRISHI BHAVAN, NEW DELHI Dated : September 7, 1995. To, The Chairman, Development Credit Bank Ltd., 204, Raheja Centre, Nariman Point, Bombay-400 021. Sub : Striking off the name from register/formal cancellation Development Co-operative Bank. Sir, Reference your letter dated August 16, 1995, on the subject cited above. 2. Consequent upon your registration as a Joint Stock Banking Company by the name of Development Credit Bank, the Development Co-operative Bank have ceased to exist as a society under the Multi-State Co-operative Societies Act, 1984, from the date of registration under the Companies Act, 1956. Yours faithfully, (Sd.) (Mohan Kande) Joint Secretary to the Govt. of India. 20. It is thus clear that before issuing requisite permission and approval, the concerned authorities including the Ministry of Law, Justice and Company Affairs and the Reserve Bank of India have scrutinised the proposal for conversion. After considering the proposal, the authorities have incorporated the Development Co-operative Bank as a company and issued appropriate licences if there was no legal impediment in converting respondent No. 10-society into respondent No. 11-banking company. In our considered view, the entire procedure followed by respondents Nos. 10 and 11 cannot be faulted. As a matter of fact, the petitioner could not and did not point out any illegality having been committed

by the concerned authorities while issuing necessary certificates and appropriate licences. We have no manner of doubt that no illegality had been committed in incorporation of respondent No. 11. As a matter of fact the main thrust of the petitioners as challenge was to the effect that the provisions of the Multi-State Act and the Societies Act do not permit such conversion. We would be dealing with this submission of the petitioner at a later stage. 21. At this stage, we would also like to examine the submission of Mr. Chagla learned senior counsel appearing for respondent No. 11 that even if any irregularity has been committed in incorporation of respondent No. 11-company, the certificate of incorporation dated May 31, 1995, is conclusive evidence that all requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto. In other words, Mr. Chagla submitted that the certificate of incorporation is unassailable. He further submitted that the only remedy to get the certificate of incorporation cancelled is to seek winding up of a company. Mr. Chagla, learned senior counsel in support of his submission relied upon the judgment in the case of *Moosa Goolam Ariff v. Ebrahim Goolam Ariff* [1912] 39 JT 237 and in the case of *Ramasundari Ray v. Syamendra Lal Ray* [1947] ILR 1947 2 Cal 1. In the case of *Moosa Goolam Ariff* [1912] 39 JT 237, the question arose as to whether the certificate of incorporation of company was conclusive when their Lordships held thus : “In England the question whether the Registrar’s certificate is conclusive was decided so far back as 1867 by Lords Cairns, sitting in the Court of Appeal. In *Peel v. London and North Western Railway’s case* [1907] 1 Ch 5, after signature and before registration, a proposed memorandum of association had been altered without the authority of the subscribers so materially that, in the words of Lord Cairns, ‘the alteration entirely neutralized and annihilated the original execution and signature of the document. The company, however, was registered, and the Registrar gave his certificate of incorporation. It was objected that the memorandum of association had not been signed by seven or indeed by any subscribers, and that the provisions of the Act had not been complied with. To that proposition Lord Cairns assented. But the certificate of incorporation, he said, is not merely a prima facie answer, but a conclusive answer to such objection . . . When once the certificate of incorporation is given nothing is to be inquired into as to the regularity of the prior proceedings’. That was a plain and direct decision on the point. The observations of Lord Chelmsford in *Oakes v. Turquand* [1867] 2 HL 325 are to the same effect. I think, said his Lordship, that the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons, and that it is conclusive in this case that all previous requisites had been complied with.” 22. In the case of *Ramasundari Ray* [1947] ILR 1947 2 Cal 1, the view expressed in the case of *Moosa Goolam Ariff* [1912] 39 JT 237 was reiterated. We have no reason not to accept the principle laid down and so we hold that the certificate of incorporation is conclusive and precludes the petitioner from obtaining a declaration that the registration of respondent No. 11 under Part IX of the Companies Act was illegal and further that respondent No. 11 is not a company or incorporated body within the meaning of the Companies Act. 23. The

petitioner emphatically submitted that Section 102(1) of the Multi-State Act imposes an express bar to the applicability of the Companies Act to the Multi-State Co-operative Societies. The exemption, vide letter dated May 16, 1995, read with notification dated August 30, 1995, according to the petitioner, cannot be sustained in law inasmuch as it is detrimental to the interest of respondent No. 10. The petitioner made this submission in the light of specific exclusion of the provisions of the Companies Act from its application to the Multi-State Co-operative Society as provided under Section 102(1). Section 102(1) of the Multi-State Act reads thus : “102. Certain Acts not to apply.—The provisions of the Companies Act, 1956 (1 of 1956), and the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), shall not apply to the Multi-State Co-operative Societies.” 24. Section 99 of the Multi-State Act, however empowers the Central Government to exempt the Multi-State Co-operative Societies from any of the requirements of the Multi-State Act relating to registration. Sub-section (2) of Section 99 empowers the Central Government to issue special and general order, for reasons to be recorded therein, exempt any Multi-State Co-operative Society or any class of such societies from any of the provisions of the Multi-State Act or of the rules. Section 99 of the Multi-State Act reads thus : “99. Power to exempt multi-State Co-operative Societies from conditions as to registration.—(1) Notwithstanding anything contained in this Act, the Central Government may, by general or special order, for reasons to be recorded therein, and subject to such conditions, if any, as may be specified therein exempt any Multi-State Co-operative Society or class of such societies from any of the requirement of this Act relating to registration. (2) (a) The Central Government may, by general or special order and for reasons to be recorded therein- (i) exempt any Multi-State Co-operative Society or any class of such societies from any of the provisions of this Act or of the rules ; or (ii) direct that such provisions shall apply to such society or class of societies with such modifications not affecting the substance thereof as may be specified in the order : Provided that no order shall be made under Sub-clause (ii) so as to prejudice the interest of such society or class of such societies without a reasonable opportunity being given to make representation in the matter.” 25. There is no dispute that the Ministry of Agriculture (Department of Agriculture and Co-operation) had granted exemption vide letter dated May 16, 1995, and thereafter by notification dated August 30, 1995, issued in exercise of powers under Sub-section (2) of Section 99 of the Multi-State Act, thereby granting exemption to respondent No. 11 from the applicability of the provisions of Section 102(1) of the Act. The notification dated August 30, 1995, has already been reproduced in the earlier part of the judgment. The petitioner submitted that Section 99 cannot be invoked against the interest of the Multi-State Act and co-operative principles. According to him, Section 102 enacts an express bar against conversion of co-operative society notwithstanding exemption in purported exercise of Section 99 of the Multi-State Act. A careful reading of Sections 99 and 102 of the Multi-State Act shows that as long as the society is operating under the Multi-State Act, the provisions of the Companies Act would not apply to the Multi-State society. However, Section 102 appears to have been enacted only as a clarification or by

way of abundant caution, since certain features of a co-operative society resemble a company and, therefore, the Legislature in order to clarify, or by way of abundant caution, enacted Section 102. It is clear that the bar imposed under Sub-section (2) of Section 102 in application of the provisions of the Companies Act stands lifted on issuance of a notification under Section 99, by the Central Government, exempting any Multi-State Co-operative Society from any of the requirements of the Multi-State Act relating to registration and resultantly a Multi-State society could be registered under Part IX of the Companies Act. There is no legal impediment on the Central Government from exempting a co-operative society from the rigour of Section 102 by issuing exemption under Section 99 of the Multi-State Act. The Central Government, however, is expected to record its reasons for giving exemption by general or special order to that effect. The notification dated August 30, 1995, in the present case does record such reasons. In view thereof, there was no bar in applying the provisions of the Companies Act and Part IX in particular for registering respondent No. 10 as a banking company. 26. Before we consider the principal issue involved in the writ petition, we would also like to examine the submission of the petitioner that Section 2(7) of the Companies Act which defines body corporate expressly excludes co-operative societies from its definition and in view thereof the Development Credit Bank did not qualify for registration under Part IX of the Companies Act. The definition of body corporate under Section 2(7) of the Companies Act reads thus : “‘Body corporate’ or ‘corporation’ includes a company incorporated outside India but does not include- (a) a corporation sole ; (b) a co-operative society registered under any law relating to co-operative societies ; and (c) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf.” 27. It is true that a plain reading of the definition indicates that a co-operative society registered under any law relating to co-operative societies does not include body corporate or corporation. However, reference to body corporate under the Companies Act is for the purpose of deposits being made by one body corporate with another body corporate and investment being made by one body corporate with another body corporate. The expression “body corporate” used in the Companies Act, in Sections 370 and 372 in particular would make it abundantly clear that, it is used in a different context and it certainly would not mean the company registered under Part IX of the Companies Act. In so far as Part IX of the Companies Act is concerned, under which respondent No. 11-bank has been incorporated, it does not make any reference to body corporate as contemplated under Sections 370 and 372 of the Companies Act. As a matter of fact, reference to company in Part IX does not refer to body corporate as defined under Section 2(7) of the Companies Act. We, therefore, do not agree with the submission of petitioner that Development Co-operative Bank did not qualify for registration under Part IX since body corporate expressly excludes co-operative society from its definition under Section 2(7) of the Companies Act. 28. Coming now to the petitioner’s leading submission that Section 565 of the Companies Act refers to “company” inasmuch as Development Co-operative Bank (respondent No. 10) is not a com-

pany and is not authorised to register under Part IX of the Companies Act. In other words, there is no provision of law allowing the Development Co-operative Bank to be converted into a company. The petitioner further submitted that respondent No. 10 has made no effort to wind up or dissolve its existence under the Multi-State Act and in view thereof, its existence as the multi-State society is still a legal entity under the Societies Act and/or the Multi-State Act since it has not been wound up. In other words, under the Societies Act or the Multi-State Act there is no provision of whatsoever nature of converting a society into a joint stock company likewise also in the Companies Act. The existence of respondent No. 10 and its registration has not been extirpated or determined and despite that respondent No. 11-company has come into existence to which certificate of incorporation has also been granted by respondent No. 5. The petitioner further submitted that unless and until the existence of respondent No. 10 ceases to exist respondent No. 11 which has come into existence on May 31, 1995, cannot take over or step into the shoes of respondent No. 10. On the other hand, Mr. Chagla, learned senior counsel for respondent No. 11 submitted that the word “company” is used in Part IX of the Companies Act in the sense a group or association of persons and it also denotes a co-operative society, such as respondent No. 10. He placed reliance on the notification dated August 31, 1995, issued by the Ministry of Agriculture, Government of India and submitted that in view of the aforesaid notification, the provisions of the Companies Act would apply to a multi-State co-operative society inasmuch as the provisions of Part IX of the Companies Act could be taken recourse to for issuance of certificate of incorporation in favour of respondent No. 11. 29. Mr. Chagla, learned senior counsel further submitted that a certificate of incorporation granted by respondent No. 5 is conclusive evidence and that all the requisites prior to incorporation have been complied with and the court cannot go behind the said certificate of incorporation. Mr. Chagla, further submitted that once a company is born, the only method to get it extinguished is winding up under the provisions of the Companies Act. In support of his submission, he relied upon *T.V. Krishna v. Andhra Prabha (P.) Ltd.* . The petitioner as well as Mr. Chagla in support of their contentions invited our attention to various provisions of the Multi-State Act and the Companies Act as well. 30. The petitioner submitted that Section 5(2) of the Multi-State Act which envisages its object for the promotion of the economic and social betterment of its members through mutual aid in accordance with the co-operative principles. Section 22 of the Multi-State Act, in the petitioner’s submission, speaks about the principle of one man one vote which would get jeopardized if the society is converted as banking company under the Companies Act. He further submitted that when the society is registered under the Multi-State Act, the Central Registrar issues a certificate of registration, which, according to Section 8 of the Multi-State Act is conclusive evidence that the society is duly registered under the Act. According to the petitioner, there is no restriction under the provisions of the Companies Act as we find under Section 24 of the Multi-State Act which provides a restriction on the holding of shares. Similarly, there is no specific power given to the board of directors of taking any decision relat-

ing to conversion of the co-operative bank into a company in the Multi-State Act. Section 37 of the multi-State Act, according to the petitioner, restricts the holding of an office of a president/chairman or vice-president/vice chairman on the board of a multi-State co-operative society for two consecutive terms, whether full or part. Section 77 of the multi-State Act provides for winding up of a multi-State society. Similarly, the petitioner also invited our attention to several other provisions of the Multi-State Act and the rules and submitted that the fundamental structure of the co-operative principles would get defeated if the co-operative society is registered under the Companies Act. The petitioner also invited our attention to the provisions of the Companies Act. Section 565 of the Companies Act, in the petitioner's submission, envisages that any company consisting of seven or more members duly constituted according to law, may at any time register under the Companies Act as an unlimited company or as a company limited by shares or as a company limited by guarantee. According to the petitioner, nowhere in Section 565 including exceptions or provisos to the said Section 565 it is contemplated that a registered society can be converted into banking company under this Section. The said Section exclusively dealt with a company formed under any Act of Parliament or Indian law. In short, he submitted that Part IX of the existing Companies Act deals with registration of a company and not conversion of a non-company. The petitioner further submitted that Section 566 of the Companies Act defines joint stock company and nowhere contemplates that an incorporated society can be converted into a company or that a joint stock company includes a co-operative society or otherwise. In substance, the petitioner submitted that the provisions of the Multi-State Act and that of the Companies Act are contrary, inconsistent and incongruous with each other and, therefore, the alleged conversion alters the basic co-operative structure of a co-operative bank. 31. Mr. Chagla, learned senior counsel on the other hand, after inviting our attention to several provisions of the Multi-State Act, submitted that there is no requirement of an express enabling provisions under the multi-State co-operative society to allow conversion of co-operative bank into a banking company under Part IX of the Companies Act. According to him, the provisions enabling conversion are contained in the Companies Act. 32. In order to appreciate the submission of Mr. Chagla, learned senior counsel for respondent No. 1 that the provisions enabling conversion are contained in the Companies Act, it would be advantageous to refer to a few provisions of the said Act. Section 565 of the Companies Act speaks about the companies capable of being registered. Clause (b) of Sub-section (1) of Section 565 provides that any company formed before or after the commencement of the Companies Act in pursuance of any Act of Parliament other than the Companies Act or of any other Indian law or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members may at any time register under this Act as an unlimited company. Proviso (1) to Sub-section (1) of Section 565 also excludes a company registered under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1913. Section 565 and Section 566 which are relevant for our purpose read thus : "565. Companies capable of being registered.—(1) With the exceptions and

subject to the provisions contained in this Section,— (a) any company consisting of seven or more members, which was in existence on the first day of May, 1882, including any company registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them or under any laws or law in force in a Part B State, corresponding to those Acts or either of them ; and (b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other Indian law (including a law in force in a Part B State), or of any Act of Parliament of the United Kingdom or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members ; may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee ; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up ; Provided that- (i) a company registered under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1913 (7 of 1913), shall not register in pursuance of this Section ; (ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, and not being a joint stock company as defined in Section 566, shall not register in pursuance of this Section ; (iii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or any Act of Parliament of the United Kingdom or Letters Patent in force in India, shall not register in pursuance of this Section as an unlimited company or as a company limited by guarantee ; (iv) a company that is not a joint stock company as defined in Section 566 shall not register in pursuance of this Section as a company limited by shares ; (v) a company shall not register in pursuance of this Section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose ; (2) In computing any majority required for the purposes of Sub-section (1) when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company . . . - 566. Definition of 'joint-stock company'.—(1) For the purposes of this part, so far as it relates to the registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principal of having for its members the holders of those shares or that stock, and no other persons. (2) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.” 33. It is thus clear that for registration under Part IX, it must be a company not registered under the Companies Act, or any of the earlier Companies Acts. The definition of “company” under Section 3 of the Companies Act expressly provides that the definition will apply, where the context so requires, to a company formed or registered under the

Companies Act or an existing company meaning thereby a company formed or registered under the previous Companies Acts. Respondent No. 11 is a joint stock company within the meaning of Section 566 which on a plain reading of the Section requires that it has a permanent paid up or nominal share capital of fixed amount; that capital is divided into shares of fixed amount; and it is formed on the principle of having formed for its members and holders of those shares and no other persons. In our view, respondent No. 10 satisfied all the above conditions and accordingly is a joint stock company within the meaning of Section 566, on the date of application to the Registrar of Companies for the purpose of incorporation under Part IX. From a plain reading of Sections 565 and 566 it is clear that the expression “company” in Part IX is used in the sense of a group, assembly or association of persons which has been incorporated under the Act of Parliament or otherwise duly constituted according to law and consisting of seven or more members. The word “company” occurring in Section 566 is not a company registered under the Companies Act. In our view, it may include within its purview a co-operative society registered under the societies Act of Multi-State Act. The judgment of the Andhra Pradesh High Court in Vali Pattabhirama Rao v. Sri Ramanuja Ginning and Rice Factory (P.) Ltd., AIR 1984 AP 176 ; [1986] 60 Comp Cas 568, relied upon by Mr. Chagla while dealing with somewhat a similar situation held that the word “company” used in Section 565 of the Companies Act, corresponding to Section 263 of the Indian Companies Act, 1913, includes within its purview a partnership. Thus, it was held that the word “company” in this context could denote a partnership firm. A partnership firm could thus be registered under Part IX of the Companies Act and once it was so registered, there could be statutory vesting of title of the property of the firm in the newly incorporated company (page 579). “... The question is whether the property of the said firm had vested in the first defendant-company when the firm was registered under the provisions of the Indian Companies Act, 1913. For that it is necessary to notice the terms of Section 263 of the Indian Companies Act, 1913, that corresponds to Section 575 of the present Companies Act, 1956. Section 263 runs as follows :”Section 263. All property, movable and immovable including all interests and rights in, to and out of property, movable and immovable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein’. The word ‘company’ occurring in Section 263 is not a company registered under the Act. It is used in the sense of group, assembly or association of persons. In fact, throughout the Act the word ‘company’ was used in several Sections in the general sense of association of persons. In fact Section 11 of the present Companies Act (section 4 of the previous Act) itself which enacted the prohibition of association exceeding certain members for carrying on trade starts with saying that no company or association or partnership consisting of more than ten members shall be formed. Section 253 of the previous Act corresponds to Section 565 of the present Act. Section 565(1)(b) of the present Act corresponds to Section 253(1)(ii) of the 1913 Act, which per-

mits any company otherwise duly constituted according to law consisting of 7 or more members to be registered as a company. A partnership must be one such. This is made clear by the provisions of Section 255 of the 1913 Act (present Act Section 567) and Section 256 of the 1913 Act (present Act Section 568) whereunder a deed of partnership has to be filed before the Registrar before seeking the registration. Hence a partnership which was treated as a company for the purposes of the Companies Act can be registered under Part 8 of the previous Act (Part 9 of the present Act) and the vesting is provided by Section 263 (section 575 of the present Act). The provision is mandatory and there will be statutory vesting in the corporation so incorporated under the provisions of the Companies Act. The Registrar is bound to give a certificate of registration under Section 262 (present Section 574) which is a conclusive proof of incorporations, (vide Section 35 of the present Act that corresponds to Section 24 of the previous Act). Hence it is clear that no conveyance is necessary when the partnership is converted and registered as a company . . . " 34. Section 567 of the Companies Act provides that there should be delivered to the Registrar the documents mentioned therein as a condition of registration. As recorded earlier we are satisfied that this requirement was also satisfied as respondent No. 10 had in February, 1995, itself submitted to the Registrar of Companies. Forms Nos. 37, 40 and 41 of the Companies (Central Government's) General Rules and Forms, 1956, along with the resolution passed at the special general meeting held on January 28, 1995. We are satisfied that respondent No. 10 complied with all conditions as contemplated under Part IX of the Companies Act. 35. It is true that there is no express enabling provision under the Multi-State Act to allow conversion of co-operative bank into a banking company under Part IX of the Companies Act. However, it cannot be ignored that there is no express provision prohibiting such conversion if all the requirements contemplated under Part IX of the Companies Act are complied with. Section 575 of the Companies Act provides that all property, movable and immovable, including actionable claims, belonging to or vested in a company on the date of its registration in pursuance of Part IX, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein. In view thereof, upon incorporation of respondent No. 11 as a company under the Companies Act, all property, movable and immovable including actionable claims belonging to or vested in respondent No. 10-bank at the date of registration passed to and vested in respondent No. 11. By virtue of Sections 576 and 577 the existing liabilities of respondent No. 10 were also expressly saved and all the legal proceedings taken by or against it have continued by and against respondent No. 11. 36. Moreover, the position of law is very clear that once a company is born, the only method to get it extinguished is not by assailing its incorporation, since the certificate of incorporation is conclusive, but by resorting to the provisions of the Companies Act which provide for winding up of companies. The petitioner cannot, therefore, be said to have no remedy. 37. The next question that arises for our consideration is as to whether the existence of respondent No. 10 society continued after its conversion as banking company under the provisions of the Companies Act. In other

words, when respondent No. 11 banking company came into existence whether registration of respondent No. 10 under the Societies Act stands extirpated or determined. For determination of this issue, we may have to make reference to Section 17 of the Multi-State Act. Sub-section (1) of Section 17 provides that where the whole of the assets and liabilities of a multi-State co-operative society are transferred to another multi-State co-operative society or to a co-operative society in accordance with the provisions of Section 14, the registration of the first mentioned multi-State co-operative society stands cancelled and the society shall be deemed to have been dissolved and ceased to exist as a corporate body. The plain intendment of the Multi-State Act is that when the whole of the assets or liabilities of multi-State co-operative societies are transferred to another entity, the registration of that the multi-State society stands cancelled and the society shall be deemed to have been ipso facto dissolved and shall cease to exist as corporate body. This principle can be taken recourse to, to hold that the existence of respondent No. 10 society stood dissolved on its conversion under Part IX of the Companies Act as joint stock banking company. This also finds support from the letter dated September 7, 1995, issued by the Union of India, Ministry of Agriculture (Department of Agriculture and Co-operation) addressed to respondent No. 11 whereby it was informed that consequent upon the registration of respondent No. 11 as a joint stock banking company by the name of the Development Credit Bank, the Development Co-operative Bank (respondent No. 10) has ceased to exist as a society under the Multi-State Act, from the date of registration under the Companies Act. It is thus clear that the authorities under the provisions of the Multi-State Act have treated the registration of respondent No. 10-bank as cancelled and it ceased to exist as society under the Multi-State Act. Respondents Nos. 10 and 11 cannot be said to have committed any illegality. Even if it be assumed that there was some irregularity in conversion of respondent No. 10 to respondent No. 11, it is not a suitable case for interference under extraordinary jurisdiction in larger public interest, in view of remarkable growth of respondent No. 11 during all these years and the interest of the shareholders as would be seen from our discussion a little later. We have, therefore, no hesitation in rejecting the submission of the petitioner that respondent No. 10 is still in existence inasmuch as it has not been deregistered or wound up. 38. Coming now to the last submission of Mr. Chagla, learned senior counsel for respondent No. 11 that certain equities have already been created in favour of third parties after conversion and it is not proper, just or equitable to grant any reliefs to the petitioner. He further submitted that granting the reliefs prayed for by the petitioner would cause tremendous injustice and hardship to several persons including employees and shareholders of the respondent-bank. Mr. Chagla in support thereof placed reliance on the judgment of the apex court in the case of *State of Maharashtra v. Prabhu*. On the other hand, the petitioner submitted that the writ petition be allowed and the entire assets and liabilities of respondent No. 11 be once again transferred to respondent No. 10 and it may be allowed to function as multi-State society. 39. The record shows that the members/shareholders of respondent No. 10-bank passed the resolution at a special general meeting on January 28,

1995, which decided to implement the scheme of conversion. The scheme, inter alia, provided endorsement of shares of respondent No. 10-bank as shares of respondent No. 11-bank, each shareholder was to be allotted 200 shares of respondent No. 11 and block shares of respondent No. 11 were to be issued to the International Finance Corporation, an arm of the World Bank, Aga Khan Fund for Economic Development and Platinum Jubilee Investment Company. Accordingly, by letter dated August 16, 1995, respondent No. 11-bank called upon its shareholders to subscribe to the said shares in accordance with the scheme. More than 12,000 shareholders of the respondent-bank have already subscribed to the shares to be allotted to them. Platinum Jubilee Investment Company has on February 22, 1995, deposited as application money an amount of Rs. 6 crores with respondent No. 11-bank and also made an application to the Central Government under Section 372 of the Companies Act for being allotted shares of respondent No. 11-bank and the permission was subsequently granted by the Government of India by order dated October 27, 1995. Consequent to this permission, shares have already been allotted to the Platinum Jubilee Investment Company. Similarly, Aga Khan Fund for Economic Development has paid an aggregate amount of Rs. 8,61,54,000 towards 86,15,400 shares allotted to them. Moreover, the progress of respondent No. 11-bank, since conversion, has been remarkable as indicated below. “(a) The deposits have grown 6.34 times, i.e., from Rs. 582.67 crores on May 31, 1995, to Rs. 3,691.76 crores till March 31, 2002. (b) The advances have grown 6.49 times, i.e., from Rs. 348 crores on May 31, 1995, to Rs. 2,259.25 crores till March 31, 2002. (c) There has been a significant increase in the number of branches. There were 31 branches in May, 1995, as of March 31, 2002, there are 55 branches and 3 extension counters, both in metropolitan and rural areas. (d) There has been an increase in the capital from Rs. 7.33 crores to Rs. 22.97 crores, i.e., an increase of 3.13 times. (e) There has been an increase in the working capital from Rs. 791 crores to Rs. 4,189 crores, i.e., an increase of 5.3 times. (f) There has been an increase in the distribution of dividend from 155 prior to conversion to 30 per cent. each year subsequent to conversion till March 31, 2001. (g) The book value per share, since May 31, 1995, has increased from Rs. 86.29 per share to Rs. 131.85 per share. (h) Since the conversion the respondent-bank has been issued a licence as an authorised dealer in foreign exchange by the Reserve Bank of India and has in fact commenced operations in the same.” 40. All the above developments undoubtedly indicate that respondent No. 11-bank has made remarkable growth and progress after its conversion in 1995 and certain equities have also been created in favour of third parties after conversion and in view thereof we are satisfied that it would not be proper, just and equitable to grant any reliefs to the petitioner. By reversing the arms of clock, time cannot be reversed. We are of the considered view that allowing of the writ petition would definitely result in greater harm to the shareholders, borrowers, employees, etc. of respondent No. 11 and we, therefore, refrain from exercising our extraordinary jurisdiction under Article 226. 41. In the result, this writ petition is dismissed. Rule stands discharged. No order as to costs. (2) Writ Petition No, 2229 of 1996 : 42. The petitioner, Shri Salim Akbarali Nanji, and

four others have challenged the legality, validity and propriety of the judgment and order dated October 16, 1996, passed by the Co-operative Appellate Court, Mumbai, in Appeal No. 34 of 1996. The petitioners have also challenged the legality and propriety of the certificate of incorporation issued by the Registrar of Companies (respondent No. 5) in favour of the Development Credit Bank Ltd. (respondent No. 9) and further the letter of in principle approval to the Development Co-operative Bank Ltd. (respondent No. 8) for its conversion into banking company. The petitioners have also challenged the legality and validity of the notification dated June 1, 1995, granted by the Reserve Bank of India (respondent No. 3) and the letter dated June 26, 1995, issued by respondent No. 9. Except the first prayer whereby the judgment and order dated October 16, 1996, has been challenged in the present writ petition, all other prayers were also made in the earlier writ petition (Writ Petition No. 1443 of 1995).

43. Appeal No. 34 of 1996 filed before the Co-operative Appellate Court, along with Appeal No. 33 of 1996 and Appeal No. 39 of 1996, was directed against common judgment and order passed by the learned judge, Co-operative Court No. 1, Mumbai, in Dispute Bearing No. CC-1/95 of 1995 and in CC-1/139 of 1995 dated January 11, 1996, by which the learned judge had allowed both the disputes and granted reliefs of declaration and injunction in terms of prayers made in the dispute. The issues framed by the appellate court while deciding the appeal read thus : “Issues.—(1) Whether the opponent bank proves that notice of the special general meeting dated January 28, 1995, were served to all the members ? (2) Whether the opponent bank proves that the resolution of conversion was passed in the meeting dated January 28, 1995, validly ? (3) Whether the disputants prove that there was insufficient notice, hence special general meeting dated January 28, 1995, is illegal.” 44. Looking to the nature of the reliefs sought by the petitioners in this writ petition and the finding of facts recorded by the courts below, we do not require to examine the merits of the case in view of the detailed reasons recorded in the earlier writ petition, viz., Writ Petition No. 1443 of 1995 inasmuch as it covers the dispute raised in this petition. 45. In view thereof, the present writ petition is dismissed. Rule stands discharged. No order as to costs. (3) Writ Petition No. 2492 of 2000 : 46. The petitioner, Salim Akbarali Nanji, has filed this writ petition challenging the legality, propriety and validity of the resolution No. 10-D in the notice dated August 12, 2000, passed at the annual general meeting called on September 30, 2000, in respect of dematerialisation of shares and securities of respondent No. 11-credit bank with the depository company under the Depositories Act, 1996. It is further prayed by the petitioner that the resolution at item No. 9 adopted in the said annual general meeting for increase in authorised share capital from Rs. 25 crores to Rs. 50 crores of the Development Credit Bank Ltd. (respondent No. 11). Without issuing rule this writ petition was directed to be heard along with Writ Petitions Nos. 1443 of 1995, 2229 of 1995, 2044 of 1995 and 786 of 1996 by order dated February 2, 2001. Looking to the reliefs sought by the petitioner in the instant writ petition and bearing in view the judgment in Writ Petition No. 1443 of 1995, we are of the opinion that we need not deal with the merits of the present writ petition. As a matter of fact, for the reasons recorded

in our judgment in Writ Petition No. 1443 of 1995 delivered today, this writ petition is rendered infructuous and in view thereof it is dismissed in limine. (4) Writ Petition No. 786 of 1996 : 47. The petitioner, Shri Salim Akbarali Nanji, has filed this writ petition seeking direction to respondents Nos. 3, 4 and 5 and also its all office-bearers to convene an annual general body meeting for the co-operative year ended on March 31, 1995, forthwith and further to furnish to its members the annual accounts and report for the financial year from April 1, 1995, to March 31, 1995. The petitioner has also sought direction for declaration of dividend for the co-operative year 1994-95 and further to declare and conduct the election of the president and the board of directors of the bank under the Co-operative Societies Act/Rules. The petitioner has also prayed for direction to take back the assets and liabilities of respondent No. 1 from respondent No. 2 and function as co-operative bank. Further, prayer is not to grant a single advance for over Rs. 2.5 crores by respondent No. 2 as the maximum limit in total that can be granted under the Multi-State Act, and lastly the petitioner has prayed for injunction restraining respondents Nos. 2, 3 and 6 from taking any action in pursuance of issuance of public issue or equity shares with or without premium or issuing banking company bonus shares to the shareholders under the Companies Act and in furtherance of listing of shares of new company in the share market. 48. Rule has not been issued in this writ petition also. The petitioner has prayed for diverse reliefs in the present writ petition and all of them have either become infructuous or have been rendered ineffective in view of the reasoning recorded in Writ Petition No. 1443 of 1995. 49. In view thereof, this writ petition is also dismissed in limine. 50. Certificate copy expedited. 51. Parties may be provided ordinary copy of this order duly authenticated by the court associate on payment of usual copying charges.