Supreme Court of India
Reserve Bank Of India & Ors vs Peerless General Finance And ... on 4 January, 1996
Equivalent citations: 1996 AIR 929, 1996 SCC (1) 753
Author: S Agrawal
Bench: Agrawal, S.C. (J)

PETITIONER:
RESERVE BANK OF INDIA & ORS.

Vs.

RESPONDENT:
PEERLESS GENERAL FINANCE AND INVESTMENT COMPANY LTD. & ANR.

DATE OF JUDGMENT: 04/01/1996

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
G.B. PATTANAIK (J)

CITATION:
1996 AIR 929 1996 SCC (1) 753
JT 1996 (1) 38 1996 SCALE (1)32

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.C.AGRAWAL, J. :

Special Leave granted.

This appeal directed against the judgment of the Calcutta High Court dated May 3, 1995, is in the third round of the litigation between the Peerless General Finance & Investment Company Ltd. (hereinafter referred to as `Peerless') and the Reserve Bank of India (hereinafter referred to as `the Bank').

Peerless was incorporated in 1932 as a limited company under the provisions of the Indian Companies Act, 1913 with the name Peerless General Insurance and Investment Company Ltd. It was carrying on life insurance business. After the enactment of the Life Insurance Corporation Act, 1956 Peerless could not carry on life insurance business and it changed its name to `Peerless

General Finance and Investment Co. Ltd.' and is now carrying on finance and investment business. It offers small savings schemes to the public at large wherein the subscribers are required to pay a fixed amount as subscription on yearly, half-yearly or quarterly basis for a fixed number of years and on the expiry of the said period, the subscriber is paid a sum of money called Endowment sum, which is the face value of the certificate, and certain additional amounts by way of bonus. The said schemes offered by Peerless are some what similar to Recurring Deposit schemes run by commercial banks.

The business transacted by the banking companies is regulated by the Banking Regulation Act, 1949. Since non- banking companies started receiving deposits from general public on a large scale, it became necessary to make suitable provisions for regulating the same. The Reserve Bank of India Act, 1934 (hereinafter referred to as `the Act') was amended by Act No. 55 of 1963 and Chapter III-B [Section 45 (H) to 45 (Q)] which contains provisions relating to non-banking institutions receiving deposits and financial institutions was inserted in the Act. In Section 45-I various expressions, viz., `Company', `Corporation', `Deposit', `financial institution', `firm' and `non-banking institution' have been defined. Section 45-J empowers the Bank to regulate or prohibit the issue of prospectus or advertisement by a non-banking institution soliciting deposits of money from the public. 45-K enables the Bank to collect information from non-banking institutions as to deposits and to give directions to such institutions. Section 45-L empowers the Bank to call for information from financial institutions and to give directions to such institutions. Section 45-Q provides that the provisions of Chapter -III B shall have effect not-withstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. After the insertion of Chapter III-B in the Act, the Bank issued three sets of directions to regulate acceptance of deposits by non-banking companies, categorizing them into financial, non-financial and miscellaneous companies. Non-Banking Financial Companies (Reserve Bank) Directions, 1966 related to companies [other than an insurance company, or stock exchange or stock brooking company] engaged in hire-purchase finance, housing finance, investments, loan equipment leasing, mutual benefit business etc. Non-Banking Non-Financial Companies (Reserve Bank) Directions, 1966 related to a company which was not a banking company nor a financial company referred to above. Miscellaneous Non-Banking Companies (Reserve Banking) Directions, 1973 related to a company engaged in the business of collecting moneys in one lumpsum or otherwise by sale of units, certificates or other instruments and utilising the moneys so collected for giving to a specified number of subscribers by lot or draw, prizes or gifts etc. and refunding the money with or without interest to those who have not won any prize etc., or conducting any other form of chit or kuri or any other similar business. It was found that a vast majority of the non-banking companies accepting deposits were non-financial companies and in order to more effectively regulate the deposit accepting activities of these companies, the Companies (Amendment) Act, 1974 was enacted and Sections 58-A and 58-B were inserted in the Companies Act, 1956. Section 58-A makes provisions for regulating the acceptance of deposits by such non-banking non-financial companies and vests the said power in the Central Government. In Delhi Cloth and General Mills etc. v. Union of India etc. 1983 (3) SCR 438 this Court has upheld the validity of Section 58-A and has rejected the contention that it was violative of the rights guaranteed under Articles 14 and 19(1)(g) of the Constitution.

After the issuance of the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973, Peerless sought exemption from complying with the said directions and such exemption was granted to it by the Bank from the provisions of Paragraph 4 of the said directions in so far as those provisions restricted the acceptance of subscriptions under the schemes upto 25% of the paid-up capital and free reserve fund. While granting this exemption certain conditions were, however, imposed. In 1974, a study group headed by Dr.J.S.Raj was appointed by the Bank to examine the existing statutory provisions with a view to assessing their adequacy in regulating the conduct of business by non-banking companies in the context of the monetary and credit policy laid down by the Bank from time to time and to suggest measures for further tightening up the provisions as to ensure that the activities of such companies, in so far as they pertained to the acceptance of deposits, investments, lending operations etc. subserved the national interest and served more effectively as adjuncts to the regulation of the monetary and credit policies of the country besides affording the degree of protection to the depositors' moneys. Having regard to the recommendations of the Raj Committee, the Bank, in 1977 issued the Miscellaneous Non- Banking Companies (Reserve Bank) Directions, 1977 and the Non-Banking Financial Companies (Reserve Bank) Directions, 1977. In the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977, there was a departure from the earlier directions of 1973 in the sense that for the first time a ceiling was fixed in respect of the period for which deposits could be accepted and that the said period could not be more than thirty six months. Peerless applied to the Bank for being granted exemption from the provisions of the said Directions of 1977. While the said matter was pending, the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 was enacted by Parliament and it came into force with effect from December 12, 1978. The Bank took the view that the schemes conducted by Peerless were covered by the provisions of the said Act and as Peerless was prohibited from doing fresh business it was required to wind up its existing business under the Act. The Bank was of the view that there was no question of granting any exemption to Peerless from the provisions of the Directions of 1977. The Bank, however, considered the claim of Peerless for exemption on merits and found that it was necessary to cancel the exemption already granted. Thereupon Peerless filed a writ petition in the Calcutta High Court for a declaration that the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 did not apply to the business carried on by it. The said writ petition of Peerless was allowed by a Division Bench of the Calcutta High Court and it was declared that the business carried on by Peerless did not fall within the mischief of the the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The said view of the Division Bench of the High Court was affirmed by this Court in Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd., 1987 (2) SCR 1, (hereinafter referred to as `Peerless I'). The Court, after examining the various schemes offered by Peerless, held that the said schemes were not covered by he expression `prize chits' as defined in Section 2(e) of the said Act. While upholding the decision of the Calcutta High Court in that regard, it was, however, observed :

> "The appeals filed by the Reserve Bank of India, the Union of India and the State of West Bengal are accordingly dismissed. It is open to them to take such steps as are open to them in law to regulate schemes such as those run by the Peerless Company to prevent exploitation of ignorant subscribers. Care must also be taken to protect the thousands of employees."

In this context, Chinnappa Reddy J. (who delivered the main judgment) has referred to the mushroom growth of financial and investment companies offering staggeringly high rates of interest to depositors leading the court to suspect whether these companies are not speculative ventures floated to attract unwary and credulous investors and capture their savings and has said :

> "It does not require much imagination to realise the adventurous and precarious character of these businesses. Urgent action appears to be called for to protect the public. While on the one hand these schemes encourage two vices affecting public economy, the desire to make quick and easy money and the habit of excessive and wasteful consumer spending, on the other hand the investors who generally belong to the gullible and less affluent classes have no security whatsoever. Action appears imperative."

[p.46] Khalid, J, in his concurring judgment, has expressed the same sentiments when he said :

> "I share my brother's concern about the mushroom growth of financial companies all over the country. Such companies have proliferated. The victims of the schemes, that are attractively put forward in public media, are mostly middle class and lower middle class people. Instances are legion where such needy people have been reduced penniless because of the fraud played by such financial vultures. It is necessary for the authorities to evolve fool-proof schemes to see that fraud is not allowed to be played upon persons who are not conversant with the practice of such financial enterprises who pose themselves as benefactors of people."

[p. 12] Keeping in view the observations of this Court in Peerless I, the Bank issued Residuary Non-Banking Companies (Reserve Bank) Directions, 1987 (hereinafter referred to as the `1987 Directions') vide notification dated May 15, 1987. The said directions are stated to have been issued in exercise of the powers conferred by Sections 45-J and 45-K of the Act. Paragraph 2 of the 1987 Directions prescribes that the Directions are applicable to every residuary non-banking institution, being a company, which receives any deposit under any scheme or arrangement by whatever name called, in one lumpsum or in instalments by way of contributions of subscriptions or by sale of the units or certificates or other instruments, or in any other manner and which, according to the definitions contained in Non-Banking Financial Companies (Reserve Bank) Directions, 1977 or, as the case may be, the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977, is not an equipment leasing company, a hire purchase finance company, a housing finance company, an insurance company, an investment company, a loan company, a mutual benefit financial company and a miscellaneous non-banking company. Paragraph 4 initially provided that on and from 15th May, 1987, no residuary non- banking company shall receive any deposit repayable on demand or on notice or after a period of less than 12 months or more than 120 months from the date of receipt of such deposit, or renew any deposit received by it whether before or after that date, unless such deposit, on renewal, is repayable not earlier than 12 months and not later than 120 months from the date of such renewal. Paragraph 5 prescribes that the minimum rate of return, shall not be less than the amount calculated at the rate of 10% per annum (to be compounded annually) on the amount deposited. By way of security for depositors, Paragraph 6 made provision regarding investment of

the amounts which are received by a residuary non-banking company in the following terms :

> "6. On and from 15th May, 1987, (1) every residuary non-banking company shall deposit and keep deposited the fixed deposits with public sector banks or invest and keep invested in unencumbered approved securities (such securities being valued at their market value for the time being), or in other investments, which in the opinion of the company are safe, a sum which shall not, at the close of business on 31st December 1987 and thereafter at the end of each half year that is 30th June and 31st December be less than the aggregate amounts of the liabilities to the depositors whether or not such amounts have become payable;
>
> Provided that of the sum so deposited or invested
>
> (a) not less than 10 per cent shall be in fixed deposits with any of the public sector banks;
>
> (b) not less than 70 per cent shall be in approved securities;
>
> (c) not more than 20 per cent or ten times the net owned funds of the company, whichever amount is less, shall be in other investments, Provided that such investments shall be with the approval of the Board of Directors of the Company.

x x x x x x"

In Paragraph 7 provision is made for abolition of forfeiture and it is directed that on and from 15th May, 1987 no residuary non-banking company shall forfeit any amount deposited by a depositor, or any interest, premium bonus or other advantage accrued thereon. Paragraph 8 prescribes the particulars to be specified in an application form soliciting deposits. Paragraph 9 requires that every residuary non-banking company shall furnish to every depositor a receipt for every amount which has been or which may be received by the company by way of deposit before or after the commencement of the 1987 Directions. Paragraph 10 makes provision for keeping register/registers of deposits and the particulars to be entered therein. Paragraph 11 prescribes information which must be included in the report of the Board of Directors that is laid before the company in general meeting. Paragraph 12 provides as under :

> "Every residuary non-banking company shall disclose as liabilities in its books of accounts and balance sheets, the total amount of deposits received together with interest, bonus, premium or other advantage, accrued or payable to the depositors."

Paragraph 13 prescribes that copies of the audited balance sheet and the profit and loss account together with a copy of the report of Board of Directors should be furnished to the Bank within 15 days of the meeting of the company under Section 217(1) of the Companies Act, 1956. Paragraph 14 requires a residuary non-banking company to submit to the Bank returns furnishing information on matters specified in the Schedule to the Directions. Paragraph 16 makes provision regarding

advertisements and statements in lieu of advertisement which are issued by a residuary non-banking company. Paragraph 19 empowers the Bank, if it con siders it necessary for avoiding any hardship or any other just and sufficient reason, to grant extensions of time to comply with or exempt any company or class of companies, from all or any of the provisions of the Directions either generally or for any specified period subject to such conditions as the Bank may impose. Paragraph 20 lays down that nothing contained in Paragraph 19 of the Non-Banking Financial Companies (Reserve Bank) Directions, 1977 shall apply to the residuary non-banking companies.

After the issuance of the 1987 Directions, Timex General Finance & Investment Co. Ltd. filed a writ petition challenging the validity of the said directions before the Calcutta High Court. The said writ petition was disposed of by a Division Bench of the Calcutta High Court whereby certain directions were given to the Bank to modify the 1987 Directions and make them reasonable and workable to safeguard the interest of depositors and protect the employees. After the said decision, Peerless got itself impleaded as a party-respondent in the said writ petition and obtained further directions from the High Court. The said orders of the High Court were challenged by the Bank before this Court. Peerless also filed a writ petition under Article 32 of the Constitution challenging the validity of the 1987 Directions. The appeals of the Bank as well as the writ petition filed by Peerless were disposed of by this Court by its judgment in Peerless General Finance and Investment Co. Ltd. & Anr. v. Reserve Bank of India, 1992 (1) SCR 406, (hereinafter referred to as `Peerless II').

In Peerless II the main controversy central round Paragraphs 6 and 12 of the 1987 Directions. It was urged that the 1987 Directions were ultra vires the power conferred on the Bank by Sections 45-J and 45-K of the Act inasmuch as none of these sections authorises the Bank to frame any directions prescribing the manner of investment of deposits received or the method of accountancy to be followed or the manner in which its balance sheets and business of accounts are to be drawn up. The said contention was negatived by this Court. Kasliwal J. has held that the Bank was competent and authorised to issue the 1987 Directions in exercise of powers conferred under Section 45- K(3) of the Act which confers a wide power on the Bank to give any direction in respect of any matter relating to or connected with the receipt of deposits and that under the said provision the Bank is entitled to give directions with regard to the manner in which the deposits are to be invested and also the manner in which such deposits are to be disclosed in the balance sheets or books of accounts of the company. Ramaswamy J., in his concurring judgment, while agreeing with the view of Kasliwal J. that the directions could be upheld under Section 45-K(3), has further held that the directions could also be upheld under Section 45-L of the Act.

As regards the challenge to the validity of the provisions contained in Paragraphs 6 and 12 of the 1987 Directions on the ground of being violative of the right guaranteed under Article 19(1)(g) of the Constitution, it may be stated that Peerless was following the actuarial method which is adopted by insurance companies and was treating a certain percentage of the amount collected by way of each instalment under the certificates of deposits as part of the income and it was retained and taken to the profit and loss account and it was utilised for payment of commission to the agents and for incurring other expenses. Since such a course was impermissible under Paragraphs 6 and 12 of the 1987 Directions, the validity of the said directions was challenged on the ground that the same were violative of the right guaranteed under Article 19(1)(g) of the Constitution. On behalf of Peerless it

was submitted that it is inherent in the business carried on by Peerless and other residuary non-banking companies that the working capital is generated out of the subscriptions received from the certificate holders and such business comprises in collecting subscriptions from depositors either in lumpsum or in instalments and such deposits are paid back with the guaranteed accretions, bonus, interest, etc. in terms of the contract at the end of the stipulated term and through this business such companies have rendered great and commendable service to the nation in mobilising small savings and giving a boost to the movement of capital formation in the country. It was submitted that though interest of depositors is an important consideration but the said interest is not impaired in any manner whatsoever by the method of accountancy that was being followed by Peerless and by all similar companies namely, appropriation of a part of the subscription to the profit and loss account and meeting the working capital requirements out of the same. Arguments were also advanced on behalf of All India Field Officers Association which claimed to represent 14 lac field officers engaged by Peerless on the basis of individual contracts of engagements. It was submitted that they earn their livelihood solely by collecting business for Peerless and for collecting such business Peerless pays them commission at a contractual agreed percentage on the value of business collected and that the said field officers have to meet all expenses for procuring such business such as travelling expenses, boarding, lodging, office and administrative expenses etc. out of such commission and they have to undertake long tours and have to travel into remote villages to reach the small depositors. It was submitted that if the 1987 Directions were upheld, the undertaking of Peerless will face inevitable closure and almost 14 lac field officers will lose their only source of livelihood and will be virtually thrown on the streets and thus any restriction which would be prohibitive or which would result in closure of the undertaking of Peerless would be against public interest. The said contentions were rejected by the Court. It was held :

Kasliwal J.

> "In our view the Reserve Bank is right in taking the stand that if these companies want to do their business, they should invest their own working capital and find such resources elsewhere with which the Reserve Bank has no concern".
>
> [p. 445] "We cannot ignore the possibility of persons having no stake of their own starting such business and after collecting huge deposits from the investors belonging to the poor and weaker sections of the society residing in rural areas, and to stop such business after a few years and thus devouring the hard earned money of the small investors. It cannot be lost sight that in such kind of business, the agents always take interest in finding new depositors because they get a high rate of commission out of the first instalment, but they do not have same enthusiasm in respect of deposit of subsequent instalments. In these circumstances, if the Reserve Bank has issued the directions of 1987 to safeguard the larger interest of the public and small depositors it cannot be said that the directions are so unreasonable as to be declared constitutionally invalid". [pp. 447-448] Ramaswamy J.
>
> "No-one can have fundamental right to do any unregulated business with the subscribers/depositors' money. Even the banks or the financial companies are

> regulated by ceiling on public deposits fixing nexus between deposits and net- worth of the company at the ratio of 3:1, i.e. 25% of the capital net-worth. No one would legitimately be expected to get immediate profits or dividend without capital investment. The concept of profit or interest per-supposes capital investment."

[p. 461] The Court rejected the contention that in case the impugned directions are not struck down, Peerless will have to close down its business and several thousands of employees and their families and several lakhs of field agents would be thrown on the streets and left with no employment. It was observed by Kasliwal J. :

> "We are not impressed with the argument of Mr.Somnath Chatterjee, Learned Senior Advocate for the Peerless that after some years the Peerless will have to close down its business if directions contained in paragraphs 6 and 12 are to be followed. The working capital is not needed every year as it can be rotated after having invested once. If the entire amount of the subscribers is deposited or invested in the proportion of 10% in public sector banks, 70% in approved securities and 20% in other investments, such amounts will also start earning interest which can be added and adjusted while depositing or investing the subsequent years of deposits of the subscribers." [p.448] "Paragraph 5 of the directions relates to the minimum rate of return fixed at 10% per annum for a deposit with a maturity of 10 years. It is a matter of common knowledge that in the present times even the public sector corporations and banks and other financial and non-financial companies pay interest at much more higher rates ranging from 14 to 18%. Thus according to the above scheme the respondent companies and the others doing such business can easily earn a profit of 4 to 5% on their investments."

[p. 444] Similarly, Ramaswamy J. has said :

> "The mechanism evolved in the directions is foolproof, as directed by this Court in first Peerless case, to secure the interest of the depositors, as well is capable t monitor the business management of every R.N.B.C. It also, thereby, protects interest of the employees/field staff/commission agents etc. as on permanent basis overcoming initial convulsion. It was intended, in the best possible manner, to subserve the interest of all without putting any prohibition in the ability of a company to raise the deposit, even in the absence of any adequate paid up capital or reserve fund or such pre-commitment of the owner, to secure such deposits."

[p. 462] After the said decision in Peerless II upholding Paragraphs 6 and 12 of the 1987 Directions, Peerless has resorted to the course of splitting up the amounts received in respect of the first two instalments in the scheme. By way of illustration we would refer to their scheme in Table 23. Under this Scheme endowment amount was Rs. 1400/- payable on maturity after 10 years and the yearly instalment was Rs. 100/-. Out of the sum of Rs. 100/- received by way of first and second instalments, Rs.70/- was treated as deposit in each of the two years. The balance amount of Rs. 30/- out of the first instalment was credited as processing charges and the balance amount of Rs. 30/-

out of the second instalment was credited as maintenance charges. On maturity the subscriber was entitled to be paid Rs. 1400/- as endowment sum and an additional amount of Rs.353/- as bonus. The case of Peerless is that the two amounts of Rs. 30/- each which were retained by way of processing charges and maintenance charges were not part of deposit and it was not necessary for Peerless to comply with the directions contained in Paragraphs 6 and 12 of the 1987 Directions in respect of the said sums. In order to cover up this mode of avoiding compliance with the requirements of Paragraphs 6 and 12 of the 1987 Directions, the Bank, by notification dated April 19, 1993, amended the 1987 Directions and inserted Paragraph 4A which contains the following provision :

> "4A. No residuary non-banking company shall take from any depositor/subscriber to any schemes run by the company, with or without his consent, any amounts towards processing or maintenance charges or any such charges, by whatever name called, for meeting its revenue expenditure.
>
> Provided that a company may charge to a new depositor a one time initial sum not exceeding Rs. 10 towards cost or expenses for issuing brochures/application form, servicing the depositor's account, etc."

By notification dated April 10, 1993, Paragraph 4 was also amended and on and from April 12, 1993 the maximum period for deposits was reduced from 120 months to 84 months.

Feeling aggrieved by the said amendments introduced in the 1987 Directions, Peerless filed a writ petition, being C.O. No.21038(W) of 1993, in the Calcutta High Court to assail the validity of the said amendments. The said writ petition has been partly allowed by the learned Single Judge of the High Court by the impugned judgment dated May 3, 1995. The High Court has upheld the validity of the notification dated April 10, 1993 whereby the maximum period of deposits was reduced from 120 months to 84 months and it has been held that the Bank was competent to make the said amendment in view of the powers conferred on it under Section 45-K(3) of the Act. The High Court has, however, held that the notification dated April 19, 1993 whereby Paragraph 4A was introduced in the 1987 Directions was ultra vires the powers conferred on the Bank and that the Bank was not competent to issue such a notification under Section 45- J, 45-K or 45-L of the Act. Hence this appeal.

The first question which requires consideration is whether in exercise of the powers conferred on it by the Act the Bank is competent to issue the notification dated April 19, 1993 inserting Paragraph 4A in the 1987 Directions. Shri Harish N. Salve, the learned senior Counsel appearing for the Bank, has submitted that the direction contained in Paragraph 4A could be given by the Bank in exercise of the power conferred on it under sub-section (3) of Section 45-K and, in the alternative, Shri Salve has urged that, insofar as Peerless is concerned, since it is a financial institution as defined in clause (c) of Section 45-I of the Act, the directions contained in Paragraph 4A could be given in exercise of the power conferred on the Bank under Section 45-L of the Act. We will first examine the provisions of Section 45-K(3) of the Act which reads as under :

> "45-K(3). The Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any non-banking institution or group of non- banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received."

According to the High Court, Section 45-K(3) cannot be invoked for two reasons, namely, (i) Paragraph 4A makes provision regarding recovery of processing charges or maintenance charges which cannot be regarded as a `deposit' as defined in clause (bb) of Section 45-I; and (ii) the words "in respect of any matters relating to or connected with" in Section 45-K(3) have to be construed in a restricted sense in view of the words "including the rates of interest payable on such deposits, and the periods for which deposits may be received".

Shri Salve has submitted that the object underlying the enactment of Section 45-K (which is part of Chapter III B) is to regulate the conditions on which deposits may be accepted by non-banking companies or institutions and to prevent malpractices and with that end in view very wide powers have been conferred on the Bank to give directions under Section 45-K(3) of the Act. The submission of Shri Salve is that in Peerless II this Court has upheld the directions contained in Paragraphs 6 an 12 of the 1987 Directions and that the directions that are contained in Paragraph 4A are designed to prevent the evasion of the directions contained in Paragraphs 6 and 12 and to make them effective and that the power to issue directions contained in Pragraphs 6 and 12 would necessarily encompass the power to issue directions to ensure that they are not avoided by contrivances or devices which essentially involve a change in nomenclature. Shri Salve has further submitted that the expression `deposit' as defined in clause (bb) of Section 45-I has been defined in very wide terms to include receipt of money by way of deposit or loan or in any other form and since the said definition is contained in an enabling statute, it would be inapposite to construe the words used in the said definition in a restrictive sense particularly, when there are provisions expressly excluding a number of items which would otherwise fall within the definition which clearly indicates that the legislature intended to use the expression in its widest sense as including receipts which may be revenue in nature. Shri Salve has also contended that the words "in respect of any matters or connected with the receipt of deposits" in Section 45-K(3) are of very wide amplitude and they cannot be restricted by the words which follow these words.

Shri Somnath Chatterjee, the learned Senior Counsel appearing for Peerless, has, on the other hand, supported the judgment of the High Court and has urged that deposit means a sum of money received with a corresponding obligation to repay the same and that processing/maintenance charges recovered by Peerless, being non-refundable in nature, cannot be deposits. Shri Chatterjee has argued that the words "any other form" in the definition of `deposit' contained in Clause (bb) of Section 45-I have to be construed ejusdem generis with the words "deposits or loan" which precede these words. In the alternative, Shri Chatterjee has invoked the rule of Noscitur-a-Sociis and that since the words "any other form" occur in the company of the words "deposit or loan" they mean other forms of payment which are refundable. As regards the words "relating to or connected with the receipt of deposits" in Section 45- K(3) of the Act, the submission of Shri Chatterjee is that the

words "including rates of interest payable on such deposits and the period for which deposits have been received" which follow these words indicate that the preceding words have been used in a restricted sense or otherwise there was no need to use the words which follow them.

While constructing the ambit of the power conferred on the Bank under Section 45-K(3), we cannot lose sight of the object underlying the said provision. Section 45-K is part of Chapter III-B which was inserted in the Act by Act No. 55 of 1963. In the Statement of Objects and Reasons appended to the Bill it was expressly mentioned that "it is desirable that the Reserve Bank should be enabled to regulate the conditions on which deposits may be accepted by these non- banking companies or institutions". In the Statement of Objects and Reasons, hope was expressed "that the Reserve Bank will be able to prevent malpractices, if any, to stop unhealthy competition for deposits, and to prescribe and enforce reasonable conditions including realistic rates of interest, disclosure of any information or particulars in which the depositors may be interested, provision for returning of money to them in certain contingencies and other relevant matters". It would thus appear that Section 45-K(3) is an enabling provision enacted to empower the Bank to regulate the conditions on which deposits may be accepted by non-banking companies or institutions and to prevent malpractices in the matter of acceptance of such deposits. Such an enabling provision must be so construed as to subserve the purpose for which it has been enacted. It is a well accepted canon of statutory construction that "it is the duty of the court to further Parliament's aim of providing a remedy for the mischief against which the enactment is directed and the court should prefer a construction which advances this object rather than one which attempts to find some way of circumventing it. [See : Francis Bennion on Statutory Interpretation, 2nd Edn., p. 711] This words "in respect of any matters relating to or connected with the receipt of deposits" in Section 45-K(3) are of wide amplitude. Shri Chatterjee sought to cut down their amplitude by reference to the judgment of this Court in Madhav Rao v. Union of India, 1971 (3) SCR 9, wherein the expression "provisions of this Constitution relating to" in Article 363 of the Constitution has been construed to mean "provisions having a dominant and immediate connection with" and "it does not mean merely having a reference to". [p. 96]. We are unable to agree. The decision in Madhav Rao v. Union of India (supra) was given in the context of the provisions of Article 363 which excludes the jurisdiction of the Court and it was observed that the principle that a provision which purports to exclude the jurisdiction of the courts in certain matters and so deprives the aggrieved party of the normal remedy will be strictly construed, "is a principle not be whittled down" [p. 95]. In that case, the Court has emphasised :

> "The meaning of a word or expression used in the Constitution often is coloured by the context in which it occurs: the simpler and more common the word or expression, the more meanings and shades of meanings it has. It is the duty of the Court to determine in what particular meaning and particular shade of meaning the word or expression was used by the Constitution makers, and in discharging the duty the Court will take into account the context in which it occurs, the object to serve which it was used, its collocation, the general congruity with the concept or object it was intended to articulate and a host of other considerations."

[pp. 95-96] Moreover, in Peerless II, this Court has construed the expression "in respect of any matters relating to or connected with the receipt of deposits" in Section 45-K(3) of the Act and has held :

> "It (Reserve Bank) can also give directions to non-banking institutions in respect of any matters relating to or connected with the receipt of deposits, including rates of interest payable on such deposits; and the periods for which deposits may be received. This latter power flows from sub-s. (3) of Sec.45K of the Act. The Bank under this provision can give directions in respect of any matters relating to or connected with the receipt of deposits (emphasis added). In our view a very wide power is given to the Reserve Bank of India to issue directions in respect of any matters relating to or connected with the receipt of deposits. It cannot be considered as a power restricted or limited to receipt of deposits as sought to be argued on behalf of the companies that under this power the Reserve Bank would only be competent to stipulate that deposits cannot be received beyond a certain limit or that the receipt of deposits may be linked with the capital of the company. Such interpretation would be violating the language of Sec.45K (3) which furnishes a wide power to the Reserve Bank to give any directions in respect of any matters relating to or connected with the receipt of deposits. The Reserve Bank under this provision is entitled to give directions with regard to the manner in which the deposits are to be invested and also the manner in which such deposits are to be disclosed in the balance-sheet or books of accounts of the company. The word `any' qualifying matters relating to or connected with the receipt of deposits in the above provision is of great significance and in our view the impugned directions of 1987 are fully covered under Sec.45 K(3) of the Act, which gives power to the Reserve Bank to issue such directions."

[pp. 430-31] It is thus evident that the words "in respect of any matters relating to or connected with the receipt of deposits" in Section 45-K(3) confer a wide power on the Bank to issue directions and the said power is not restricted or limited to receipt of deposits only. The amplitude of this power cannot be curtailed by the words "including the rates of interest payable on such deposits and the periods for which deposits may be received" in Section 45-K(3). It is no doubt true that the word "including" is generally used in extensive sense to bring within the ambit of the provision matters referred to in the inclusive clause which normally would not have been covered by the provision. But that is not always so. Many times the Legislature uses an inclusive phrase to specifically include a matter by way of abundant caution. Having regard to the object and purpose underlying the enactment of Section 45-K, we are unable to construe the words "including the rate of interest payable on such deposits and the periods for which deposits may be received" as restricting the ambit of the words "in respect of any matters relating to or connected with the receipt of deposits", which, in our opinion, must be given their natural meaning as construed by this Court in Peerless II. This means that the Bank has been given the power to issue directions in respect of any matter relating to or connected with the receipt of deposits.

The processing/maintenance charges or other similar charge received by a non-banking company from the sub- scriber to the schemes are received with the avowed purpose of processing and

maintenance of the deposits by the subscriber under the scheme. These amounts are received as part of the instalments paid by the subscriber. They are undoubtedly related to and connected with the receipt of deposits and it is not possible to say that the said charge are not matters related to or connected with the receipt of deposits. Paragraph 4A which prohibits receipt by a non- banking company from any depositor/subscriber to any scheme run by the company, with or without his consent, any amount by way of processing/maintenance charges or any such charge, by whatever name called, for meeting its revenue expenditure, is, therefore, a provision containing directions in respect of matters relating to or connected with the receipt of deposits by a non-banking company.

In this context, it would also be relevant to mention that in Peerless II this Court has upheld the directions contained in Paragraphs 6 and 12 of the 1987 Directions. The directions which are contained in Paragraph 4A, introduced by way of amendment by notification dated April 19, 1993, seek to plug the loopholes by which the directions contained in Paragraphs 6 and 12 were sought to be evaded and circumvented. Paragraph 4A thus seeks to prevent evasion of the directions contained in Paragraphs 6 and 12. If the Bank is competent to give the directions contained in Paragraphs 6 and 12 of the 1987 Directions, it stands to reason that the Bank should be competent to give directions which would prevent evasion of those directions and secure their effective implementation. Section 45-K is in the nature of an enabling provision. In the matter of construction of enabling statutes the principle applicable is that if the Legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view. [See : Craies on Statutes, 7th Edn. p. 258]. It has been held that the power to make a law with respect to any subject carries with it all the ancillary and incidental powers to make the law effective and workable and to prevent evasion. [See : Sodhi Transport Company V. State of U.P., 1986 (1) SCR 939 at pp. 947-48] It must, therefore, be concluded that Paragraph 4A, which has been inserted by notification dated April 19, 1993 in the 1987 Directions, falls within the power conferred on the Bank to issue directions under Section 45 K(3) of the Act and the High Court was in error in holding that the said provision is ultra vires the power conferred on the Bank by the Act. In that view of the matter, we do not consider it necessary to go into the question whether the processing/maintenance charges received by Peerless from the subscribers under the schemes can be regarded as `deposit' as defined in clause (bb) of Section 45-I of the Act. For the same reason it is not necessary to go into the question whether the said direction could be sustained under Section 45-L of the Act.

We may now examine whether Paragraph 4A is violative of the provisions of Articles 14 and 19(1)(g) of the Constitution.

Shri Chatterjee has urged that Paragraph 4A is violative of the right to equality guaranteed under Article 14 for the reason that (i) it fixes a uniform maximum ceiling of Rs.10/- towards cost or expenses for issuing brochure/application form, servicing the depositors' account, etc., irrespective of the volume of business transacted, quality of services rendered, the level of technology adopted in the matter of rendering services etc. and thereby unequals are treated equally; and (ii) though stringent restrictions have been imposed on recovery of service charges by Peerless and other residuary non-banking companies, no similar control has been exercised by the Bank in respect of levy of service charges by others similarly situate, namely, commercial banks. As regards the first

ground of challenge based on the principle that discrimination may result by unequals being treated equally, it may be stated that equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law. [See : Jalan Trading Co.(P) Ltd. v. Mill Mazdoor Union 1967 (1) SCR 15 at p 36].

The uniform amount of Rs.10/- that has been prescribed in Paragraph 4A is for the expenses for brochure/application form and for servicing the depositors' account which would be incurred by the residuary non-banking companies in respect of their schemes. The said charges would not vary from person to person and would normally be the same in all cases and therefore, the fixation of a uniform amount of Rs. 10/- which can be charged by a company does not mean that Paragraph 4A inserted in the 1987 Directions suffers from the vice of discrimination on the ground that unequals are being treated equally.

The other ground of discrimination based on non-banking companies being treated differently from commercial banks in the matter of service charges, is also without substance. Shri Chatterjee has invited our attention to the documents filed as Annexure - E (colly.) to the supplementary affidavit of Shri Patit Pavan Roy filed on behalf of the respondents which show that certain foreign banks demand service charges for the services rendered by them to the account holders. The said documents relate to current account or savings bank accounts. No document has been brought to our notice which may show that commercial bank levy service charges in respect of a recurring deposit scheme similar to that operated by Peerless. Therefore, it cannot be said that there is discrimination between persons similarly situate in the matter of receipt of service charges for the deposits and Paragraph 4A cannot be held to be violative of Article 14 of the Constitution on that account.

Assailing the constitutional validity of the directions contained in Paragraph 4A on the ground that the same are violative of the right guaranteed under Article 19(1)(g) of the Constitution, Shri Chatterjee has submitted that the processing charges and maintenance charges that are received by Peerless from the depositors/subscribers in connection with the schemes are for the purpose of meeting the expenses that are incurred by Peerless for operating the said schemes and to pay commission to the agents who secure the deposits, and that if Peerless is deprived of these funds, it would not be possible for it to carry on its business. Shri Chatterjee has pointed that under the scheme in Table 23, that was being operated by Peerless after the decision in Peerless II, the endownment sum was Rs. 1400 and yearly instalment of Rs. 100 was payable for 10 years. A sum of Rs. 30 was being set apart towards processing charges out of the amount of Rs. 100 received by way of first instalment and out of the amount of Rs. 100 received by way of second instalment, a sum of Rs. 30 was set apart for maintenance charges. The submission of Shri Chatterjee is that setting apart of this amount towards processing charges and maintenance charges did not, in any way, prejudicially affect the depositor/subscriber because on maturity he was being paid the total amount paid by him including the processing charges and maintenance charges with interest at the rate of 10% on compound basis on the whole amount paid and the fact that part of the amount raised in first and second instalments was adjusted towards processing charges and maintenance charges did not cause any financial loss to the depositor. According to Shri Chatterjee, the total amount of Rs.

60/- that was received by way of processing charges and maintenance charges against the endowment sum of Rs. 1400 was slightly more than 4% of the whole amount. Shri Chatterjee has also stated that after the decision of the High Court and the interim order passed by this Court on May 8, 1995, Peerless has started a new scheme under Table 26 wherein endowment sum of Rs. 3500 is payable on maturity after a period of 7 years and the yearly instalment is Rs.

500. Rs. 90 is received along with the first instalment as processing charges which is not refundable. On maturity the depositor/subscriber not only gets the aforesaid endowment sum of Rs. 3500 but he also gets a guaranteed bonus of Rs. 1717.94, maturity bonus of Rs. 200 and a special bonus of Rs. 175.40, i.e., a total amount of Rs. 5593.33. It is submitted that, on maturity, the depositor/subscriber is paid the sum of Rs. 3500 in full as well as sum of Rs. 90 paid by him as processing charges and he is also paid interest at the rate of 10% on compound basis per annum on the total sum of Rs. 3500 plus Rs. 90 paid by him and an additional amount of Rs. 200/- is paid as bonus which shows that the depositor/subscriber is, in no way, a loser in paying the processing charges under the new scheme. The submission is that the said sum of Rs. 90 which is paid as processing charges is less than 3% of the endowment sum of Rs. 3500, and that by charging processing fee of Rs. 90 on the scheme, Peerless would be earning a net profit of Rs. 9.75 crores on the total business of Rs. 750 crores in a year but if Peerless is restricted to recovering Rs. 10, as per the proviso to Paragraph 4A, it would be suffering a loss of Rs. 87.2 crores in a year and that it would not be possible for Peerless to carry on its business any more and it will have close down its business resulting in unemployment of a large number of its employees as well as nearly 14 lac field officers. In support of his submission Shri Chatterjee has placed strong reliance on the observations of Chinnappa Reddy J. in Peerless I wherein, while permitting the Bank to take such steps as are open to it in law to regulate the schemes such as those run by Peerless to prevent exploitation of ignorant subscribers, it was observed that "care must be taken to protect thousands of its employees". Shri Chatterjee has also invited our attention to Regulation 50 of the SEBI (Mututal Funds) Regulations 1993, providing for limitation of expenses which enables the Asset Management Company to charge the mutual fund with its agents' commission as part of the recurring expenses and prescribes that "initial expenses in respect of any one scheme shall not exceed 6% of the fund raised under that scheme". The submission of Shri Chatterjee is that the amount that was being recovered by Peerless by way of processing charges and maintenance charges under the earlier scheme in Table 23 and the processing charges that are being raised under the current scheme in Table 26 are much less than 6%.

We are unable to accept these contentions urged by Shri Chatterjee. Similar submissions were advanced by Peerless before this Court in Peerless II wherein it was submitted on behalf of Peerless that it was inherent in the business carried on by Peerless or other similar residuary non- banking companies that the working capital is generated out of the subscription received from the certificate holders and that certain portion of subscription received by the company was transferred to the profit and loss account and the same was used to defray working capital requirements of the company, viz., payment of agents' commission, management expenses, staff salaries and other overheads. It was also urged that if Peerless was refrained from doing so, all the agents, officers and employees of Peerless would lose their jobs and their family members would be thrown on the streets. The said contention was, however, rejected by this Court. It was observed that working

capital could not be mopped up out of depositors' money and that for the purpose of entering this field of business a company should make arrangements on its own resources for working capital and for meeting the expenses and it cannot insist on utilising the money of the depositors/subscribers for this purpose. In this context, the Court has mentioned that under Paragraph 5 of the 1987 Directions the minimum rate of interest that is fixed is 10% per annum and that it is common knowledge that in present times even the public sector corporations and companies and other financial and non-financial companies pay interest at much higher rates ranging from 14% to 18% and that companies doing such business can easily earn a profit of 4% to 5% on their investments. In the context of Peerless which is already in the field, the Court has observed that there is no possibility of its closing down the business because it has already large accummulated funds collected by making profits in the past several years and that it has enough working capital in order to meet the expenses. These observations made in the context of Paragraphs 6 and 12 of the 1987 Directions are equally applicable in respect of the directions which are contained in Paragraph 4A introduced in the 1987 Directions by way of notification dated April 19, 1993, whereby the residuary non-banking companies are prohibited from recovering any amount by way of processing charges/maintenance charges or any such change from the depositor and are required to arrange for the working capital from their own resources. The working of Peerless and other residuary non-banking companies cannot be equated with that of mutual funds governed by SEBI (Mutual Funds) Regulations, 1993. Moreover, the schemes operated by Peerless are also not comparable with those of Mutual Funds. Even as regards the expenses, it may be stated that under Table 23 Peerless was receiving by way of processing charges and maintenance charges 30% of the first two instalments and under Table 26 it is receiving 18% of the first instalment. It is not disputed that a number of schemes are discontinued after the payment of one or two instalments and the subscriber gets only the amount of deposit excluding the processing charges and maintenance charges. The fact that processing charges and maintenance charges raised by Peerless are less than 6% of the endowment sum payable on maturity cannot, therefore, be the basis for holding that Paragraph 4A whereby the residuary non-banking companies are prohibited from receiving any amount by way of processing charges, maintenance charges or any similar charge imposes unreasonable restrictions on the right guaranteed under Article 19(1)(g) of the Constitution.

Shri Chaterjee has next contended that the maximum amount of Rs.10 that has been prescribed in the proviso to Paragraph 4A is wholly arbitrary and totally inadequate and has no nexus with the need of working expenses. It has been urged that from Paragraph 4A itself it is evident that the said amount of Rs. 10 has been fixed per depositor to meet the cost of brochure/application form, servicing depositors' account, etc. and that servicing depositors' account means maintenance of the account of the depositor for a period of 7 years and taking the cost of the application form/brochure, at a low figure of Rs. 5/- less than one rupee would be available per year for servicing the depositors' account which would be insufficient to cover the cost of postage and stationery, including the cost of reminder notices for renewal deposits, discharge vouchers, receipt, etc. Shri Salve has, however, submitted that the said amount of Rs. 10 as prescribed in the proviso to Paragraph 4A is meant to cover the cost of brochure/application form, etc. and since the case of Peerless is that the same cost Rs. 5 only, the said amount cannot be said to be inadequate. According to Shri Salve, by prescribing the said amount, it is not the intention to allow the residuary non banking companies to recover any sum for meeting the revenue expenditure of the residuary non-banking company including the

payment of commission to its agents. Shri Salve has also urged that no material was placed by Peerless in their pleadings to show that the fixation of the said amount is unreasonable or arbitrary. The question whether the amount of Rs. 10 that has been prescribed in the proviso to Paragraph 4A is inadequate to meet the cost of brochure/application form, and expenses servicing charges for depositors' account cannot be gone into in the absence of the necessary pleadings and material in support thereof and, therefore, it is not possible to say that the amount of Rs. 10/- that has been prescribed in the proviso to Paragraph 4A is arbitrary or unreasonable. Peerless can make a representation to the Bank for the revision of the said amount in the light of the expenses that would be incurred by it on brochure/application form and servicing depositors' account and, if such a representation is made, the Bank shall give due consideration to the same and, if the amount prescribed is found to be inadequate, the Bank should revise the same.

For the reasons aforementioned, we are unable to uphold the judgment of the High Court striking down Paragraph 4A introduced by notification dated April 19, 1993. In our opinion, it is within the competence of the Bank to issue directions in the nature contained in Paragraph 4A and the said provision is not violative of the rights guaranteed under Articles 14 and 19(1)(g) of the Constitution.

During the course of his submissions Shri Chaterjee laid emphasis on the good record of performance of Peerless and has pointed out that this has also been noticed by this Court in the earlier judgments in Peerless I and Peerless II. Shri Chatterjee has submitted that having regard to the said record, the Bank should grant exemption to Peerless from complying with the directions contained in Paragraph 4A. Shri Salve has disputed the said claim of Peerless about its performance and has invited our attention to the report of Inspection conducted under Section 45-N of the Act with respect to the financial position of the company as on March 31, 1993, which refers to violation of various provisions of 1987 Directions. Shri Chaterjee has, however, disputed the correctness of the observations that have been made in the said report. We do not propose to go into this question. It is a matter which has to be examined by the Bank in the light of the explanation that is offered by Peerless for the violations referred to in the Inspection Report. The question as to whether exemption should be granted to Peerless under Paragraph 19 of the 1987 Directions, is a matter for the Bank to consider and we do not wish to say anything in that regard.

It cannot be denied that residuary non-banking companies, like Peerless, play a useful role in the economy by mobilising savings by tapping that section of the people which the commercial banks are not able to tap. But at the same time, it cannot be ignored that there should be adequate protection for the funds entrusted to them by depositors and for that purpose it is necessary that the working of these companies should be closely monitored and supervised and adequate provisions should be made for enforcement of regulatory provisions that are made for enforcement of regulatory provisions that are made for the protection of the interest of the depositors. Since the Bank is required to discharge multi-farious functions, it would not be in a position to devote the requisite amount of attention in the matter of monitoring and supervising the functions of these companies. The Union Government may, therefore, consider whether it would be advisable to create a separate instrumentality which may be entrusted with the task of supervision and enforcement of the provisions regulating the functioning of these companies. The Union Government may also consider whether the existing provisions need to be further strengthened so as to give greater

protection to the interests of the depositors. We find that in England the Banking Act, 1987 contains provisions for Deposit Protection Scheme for the protection of the depositors. It may be considered whether provisions on similar lines could be introduced here.

In the result, the appeal is allowed, the judgment of the Calcutta High Court dated May 3, 1995 in C.O. No. 21038(W) of 1993 is set aside and the said writ petition filed by the respondents is dismissed. But, in the circumstances, there is no order as to costs.