Supreme Court of India
T. Velayudhan Achari And Anr vs Union Of India And Others on 5 February, 1993
Equivalent citations: 1993 SCR (1) 832, 1993 SCC (2) 582
Author: S Mohan
Bench: Mohan, S. (J)

PETITIONER:
T. VELAYUDHAN ACHARI AND ANR.

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT05/02/1993

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
SHARMA, L.M. (CJ)
VENKATACHALA N. (J)

CITATION:
1993 SCR (1) 832 1993 SCC (2) 582
JT 1993 (1) 580 1993 SCALE (1)586

ACT:
Constitution of India 1950: Articles 14, 19(1)(g) and 20(1).
Banking Laws (Amendment) Act, 1983 : Section 45 S.
Reserve Bank of India Act, 1934: Chapter IIIC, Section 58B (5A).
Deposits-Acceptance of-Provisions imposing ceilings in case of individuals, firms and associations-Validity of-Whether violates fundamental rights-Prescription of two year period to bring down the deposits-Prescribed limits-Whether reasonable.

HEADNOTE:
The petitioners in the writ petition challenged the constitutional validity of chapter III-C read with Section 58B(5A) of the Reserve Bank of India Act, 1934 introduced by the Banking Laws (Amendment) Act, 1983. Along with the writ petition were had several civil appeals, where the appellants had unsuccessfully challenged the aforesaid provisions as violative of Articles 14 and 19 of the Constitution, in the High Court of Delhi, which upheld their validity, and granted a certificate to appeal to this Court vide Kanta Mehta v. Union of India, 1987 (62) Company Cases P.769.

The newly incorporated Section 45S of the Reserve Bank of India Act provided that no individual or firm or an unincorporated association of individuals shall, at any time, have deposits from more than the number of depositors specified against each in the table mentioned therein. It was further provided that where at the commencement of the Act, the deposits held were not in accordance thereof,a period of two years was prescribed for bringing down the number of depositors within the relative limits specified in the Act, and contravention thereof was rendered penal. 'These provisions were brought into force on February 15, 1984.

On behalf of the petitioners it was submitted that Section 45B was

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violative of the fundamental rights under Article 19(1) kg) of the Constitution as it restricts the number of depositors and the rate of interest under Section 4(2)(iii) of the Kerala Moneylenders Act, 1958, that the two year period prescribed under Section 42 is unreasonable, and that under the Kerala Act with effect from 15110185 only 149% interest alone could be charged. It was further submitted that while receiving deposits it was not an offence and making it a criminal liability and directing payment, would amount to ex-postfacto law offending Article 20(1) of the Constitution.

The writ petition and appeals were contested by submitting on behalf of the Reserve Bank of India that it was open to the Government to regulate economic activities, and that while examining the validity of such provisions courts a laws have regard to the wisdom of the Legislature as it alone has the necessary information and expertise pointing to the needs for such a legislation. Attention was also drawn to the provisions of the Non-Banking Financial Companies (Reserve Bank) Directions of 1966 which came into force on January 1, 1969 which specifically provided that deposits shall be reduced to 25% of the paid up capital for which a two years period was prescribed and that similar directions knows as Non Banking Financial Companies Reserve Bank Directions, 1977 came to be issued with effect from 1st of July, 1977,

Dismissing the writ petition and the appeals, this Court,

HELD: 1. The impugned legislation no doubt places restrictions on the right of the appellants to carry on business, but what is essential is to safeguard the rights of various depositors and to see that they are not preyed upon. [844G]

2. The Reserve Bank of India, right from 1966, has been monitoring and following the functioning of non-banking financial institutions which invite deposits and utilise those deposits either for trade or for other various industries. A ceiling for acceptance of deposits and to requires maintenance of certain liquidity of funds as well

as not to exceed borrowings beyond a particular percentage of the net-owned funds have been provided in the corporate sector. But for these requirements, the depositors would be left high and dry without any remedy. [844H, 845A]

3. Even the corporate sector was not free from blame. It had done damage to the economy and brought ruination to small depositors. Ex-

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perience had shown that In many cases deposits taken by the companies had not been refunded on the due dates, either the companies had gone in liquidation or funds are depleted to such an extent that the companies were not in a position to refund the deposits. It was accordingly considered necessary to control the activities of the companies when accepting deposits from the 'the public". That was why Section 58A in the Companies Act of 1956 came to be introduced. [845B, C-D]

4. The danger of allowing deposits to be accepted without regulation is so acute and urgent, that to bind the hands of the Legislature that only one course alone is permissible and not to permit a play of joints would be to totally make it ineffective in meeting the challenge of the social evil. The mechanics of any economic legislation has necessarily to

be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class, the processual basis has to be accepted

5. May be, Kerala Moneylenders Act restricts the rates of Interest under Section 4(2)(iii) but that cannot enable the writ petitioners to disregard these provisions introduced by the Banking laws (Amendment) Act 1983 being the non-banking financial institutions. [846D]

6. Section 45 (1) (bb) of the Reserve Bank Act defines 'deposit. If there are enough sources of deposit there is no reason why the appellants and the writ petitioners cannot reduce the deposits. The prescription of the two year period for reduction is therefore reasonable. [847D]

7. Moreover, similar directions cam to be issued as Miscellaneous Non-Banking Companies (Reserve Bank) Directions. If, therefore, this was the position, it cannot be contended that suddenly the companies like the appellants and the writ petitioners are called upon the reduce deposits. Even otherwise, the interests of the depositors is the prime concern. [847G, 849B]

Kanta Mehta v. Union of India and others, Company Cases Vol. 62 1987 page 769, approved.

Chiney Bottling Co. Pw. Ltd. v. Assistant Registrar of Companies, Madras, 61 Company Cases 1986 page 770, disapproved.

DCM Ltd. v. U. O.I., [1983] 3 SCR 438; Srinivasa Enterpries v. Union

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of India, [1981] 1 SCR 801; State of West Bengal v. Swapan Kumar Guha [1982] 3 SCR 121; R.K Garg v. Union of India

[1982] 1 SCR 947 and Fatehchand Himmatlal and others v. State of Maharashtra [1977] 2 SCR 828, referred to,
Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd, [1987] 1 SCC 424; Peerless General Finance and Investment Co. Ltd v. Reserve Bank of India, [1992] 2 SCC 344 @ 354; Delhi Cloth and General Mills v. Union of India, [1983] 3 SCR 438 at page 468 and Reserve Bank of India v. Timex Finance and Investment Co. Ltd., [1992] 2 SCC 344 at page 354, referred to.

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 508 of 1988.

(Under Article 32 of the Constitution of India). (With WP(C) Nos. 534/88, CA. Nos. 5513/85, 5679/85, 5686/85, 183/86, 192, 235-36/86, 363,/86, 447/86, 510-15/86, 529/86, 646/86, 647/86, 1199/86, 1200/86, 1250/86, WP. (C) Nos. 143, 269, 434/86, T.P. (C) Nos. 76, 77, 78-79/86, 88/86, 139-49/86, 154/86, 155/86, CA. Nos. 81-83/86, T.C. (C) No. 81/86, I.A. Nos. 1 & 2/92 in CA. No. 5513,185) WITH (CA. No. 174/86 Manipal Finance Crop. v. U.O.L, and Anr. With CA. Nos. 193/86, 624/86, 509/86, W.P. (C) No. 1506/87, CA. Nos. 69699/86, 949-50/86, 541/86, W.P. (C) No. 602/89) D.N. Dwivedi, Additional Solicitor General, G. Viswanatha Iyer, K.N. Bhat, Anil B. Diwan, E.M.S. Anam, P.H. Parekh, C.N. Sree Kumar, R. Mohan, S. Balakrishnan, M.K.D, Namboodiri, M.S. Ganesh, S.S. Khanduja, Y.P. Dhingra, B.K. Satija, Kuldeep, S. Paribar. H.S. Parihar, Ms. A Subhashini, C.V. Subba Rao, K,R. Nambiar, M.P. Shorawala, D.K, Garg, S.K. Nandy,Randhir Jain, Ms.Malini Poduval,M.A.Krishna Moorthy, K.J,John, Ms. S. Vaidyalingam, A.K. Sanghi, P.N. Puri, Ms. Abha Jain, Ms. Madhu Moolchandani and A.G. Ratnaparkhi for the Appearing Parties. The Judgment of the Court was delivered by MOHAN, J. All these civil appeals arise by certificate granted by the High Court of Delhi against the decision reported in Kanta Mehta v. Union of India and others, Company Cases Vol. 62 1987 page 769.

All these civil appeals and writ petitions challenge the constitutional validity of Chapter 111-C read with section 58B (5A) of the Reserve Bank of India Act, 1934, introduced by the Banking Laws (Amendment) Act, 1983 (Act 1 of 1984). Hence, they are dealt with under a common judgment. In order to appreciate the challenge the necessary legal background may be set out.

In the year 1949, the Banking Regulation Act of 1949 was enacted. That contained regulatory, provisions in regard to banking under the surveillance of the Reserve Bank of India as to what would constitute "banking" as defined under Section 5(b) of the 1949 Act.

In the year 1959, the Banking Companies (Amendment) Act, 1959 was passed. Sections 17 and 18 were substituted which required banking companies to create reserve fund and maintain cash reserve. In the year 1963, Banking Laws (Miscellaneous Provisions) Act, 1963 inserted Chapter III-B in the Reserve Bank of India Act. This Chapter conferred extensive powers on the Reserve Bank of India to issue suitable instructions, to regulate and monitor diverse activities of non-banking

companies. The powers to control and regulate these non-banking institutions are set out in Sections 45-I to 45-L. While exercising these powers, the Reserve Bank of India was issuing various directions to these non-banking financial institutions. One such important direction was issued on 1st of January, 1967 to the effect that the non-banking financial companies were not to hold deposits in excess of 25 per cent of its paid-up capital and the reserves as also to non-banking, non- financial companies. They were also required to take steps to keep the deposits within the limits. This direction was challenged unsuccessfully before the Madras high Court as seen from the case reported in 1971 41 Company Cases 890 Mayavaram Financial Corporation v. Reserve Bank of India. In, 1968, by Banking Laws (Amendment) Act, 1968, Sections 10A to 10D were introduced. Section 10A provided that the Board of Directors shall include persons with professional or special knowledge. Section 10A(5) empowered the Reserve Bank of India to vary the composition of the Board.

When a report of the Study Group of non-banking financial intermediaries was submitted in the year 1971 that was studied. Thereafter in 1973 the Reserve Bank of India issued Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973 placing certain restrictions on companies carrying on prize chit and chit business from receiving deposits from the public.

In 1974, Section 58A of the Companies Act was inserted by the Companies (Amendment) Act of 1974, which came into force from 1st of February, 1975. The object was to regulate deposits received by non-banking non-financial companies. The financial companies were already covered by Reserve Bank of India directions under the Reserve Bank of India Act. Therefore, they were exempted under Section 58A (7) from the purview of that Section. Since the non-banking non- financial companies came within the purview of Section 58A, the earlier directions issued by the Reserve Bank of India Act to non-banking nonfinancial companies in the year 1966 Were withdrawn. By an amendment of 1977, Section 58A was further enlarged and the Central Government was empowered to grant extensions.

In June 1974, another Study Group was constituted which is popularly known as James Raj Committee. In July 1975, the above Study Group gave its report. In accordance with the recommendations of the Study Group elaborate rules were issued by the Central Government under Section 58A, called Banking Companies (Acceptance of Deposits) Rules, 1975 with a view of regulate the various activities of the companies to accept deposits from public. The validity of the section and the deposit rules were questioned. This Court in DCM Ltd. v. U. O.L, [1983] 3 SCR 438 upheld the same.

In 1977, directions were issued by the Reserve Bank of India superseding earlier directions of 1966 and 1973. In 1978, Bill 183 of 1978 called Banking Laws (Amendment) Bill, 1978 was introduced in the Parliament. The said Bill provided limits on depositors which were lower than the current provisions. However, the Bill lapsed on dissolution of Parliament. Thereafter prize chits and Money Circulation Schemes (Banning) Act, 1978 was enacted. This was also challenged. But that challenge was thrown out by this Court in Srinivasa Enterprises v. Union of India, [1981] 1 SCR 801.

In 1981, several new regulatory directions were given by the Reserve Bank of India. Inter alia they included restrictions on accepting or renewing deposits from shareholders, Directors etc. which exceeded 15 per cent of the net-owned funds of the companies as also restricted payment of interest on deposits at a rate of interest exceeding 15 per cent per annum. The validity of the amendment was upheld by the Madras High Court in the case reported in AIR 1983 Madras 330 A.S.P. Ayar v. Reserve Bank of India.

In State of West Bengal v. Swapan Kumar Guha, known as Sanchaita case, reported in [1982] 3 SCR 121, this Court while quashing the F.I.R. launched against the firm, Sanchaita Investments, directed that the Government and Reserve Bank of India should look into the matter deeply. It is in this background the Banking Laws (Amendment) Act, 1983 came to be enacted. Section 45S states thus:

> 45 S : Deposits not be accepted in certain cases (1) No person, being an individual or a firm or an unincorporated association of individuals. shall at any time, have deposits from more than the number of depositors specified against each, in the table below.-

TABLE

(i) Individual -Not more than twenty-five depositors excluding depositors who are relatives of the individual.

(ii) Firm -Not more than twenty-five depositors per partner and not more than two hundred and fifty depositors in all, excluding, in either case, depositors who are relatives of any of the partners.

(iii) Unincorporated-Not more than twenty five depositors per Association of individual and not more than two hundred and individualsfifty depositors in all excluding, in either case, depositors who are relatives of any of the individuals constituting the association.

(2) Where at the commencement of Section 10 of the Banking Laws (Amendment) Act, 1983 the deposits her by any such person are not in accordance with sub-section (1), he shall before the expiry of a period of two years from the date of such commencement, repay such of the deposits as are necessary for bringing the number of depositors within the relative limits specified in that sub-section.

Explanation :- For the purposes of this section

(a) a person shall be deemed to be a relative of another if, and only if,

(i) they are members of a Hindu undivided family-, or

(ii) they are husband and wife; or

(iii) the one is related to the other in the manner indicated in the list of relatives below--

List of Relatives

1. Father. 2. Mother (including step-mother). 3. Son (including Stepson). 4. Son's wife. 5. Daughter (including step-daughter). 6. Father's father. 7. Father's mother. 8. Mother's mother. 9. Mother's father. 10. Son's son. 11. Son's son's wife. 12. Son's daughter. 13. Son's daughter's husband. 14. Daughter's husband. 15. Daughter's son. 16. Daughter's son's wife. 17. Daughters daughter. 18. Daughter's daughter's husband. 19. Brother (including step-brother) . 20. Brother's wife. 21. Sister (including step-sister).

22. Sister's husband;

(b) a person in whose favour a credit balance in outstanding for a period not exceeding six months in any account relating to mutual dealings in the ordinary course of trade or business shall not, on account of such balance alone, be deemed to be a depositor."

Thus, the number of depositors has come to be limited. As to the penalty for contravention of Section 45S it is provided for under Section 58B (5A). It runs thus:

> "(5A). If any person contravenes any provision of Section 45S, he shall be punishable with imprisonment for a terms which may extend to two years, or with fine which may extend to twice the amount of deposit received by such person in contravention of that section or rupees two thousand, whichever is more, or with both."

These provisions were challenged by the appellants in the various civil appeals as violative of Articles 14 and 19 of the Constitution. A Division Bench of the High Court of Delhi in, Kanta Mehta's case supra "Section 45S read with section 58B (5A) of chapter III-C of the Reserve Bank of India Act, 1934, as introduced by section 10 of the Banking laws Amendment) Act, 1983, is not violative of articles 14 and 19 of the Constitution. There is nothing demonstrably irrelevant or perverse in limiting in section 45S the number of depositors that an individual, firm or association could accept. Nor is there any element of compulsion on individuals and firms or associations which are not incorporated to incorporate themselves as a company and article 19(1)(c) is not violated by the provisions of section 45S limiting the number of depositors whom individuals, firms and unincorporated associations could accept.

Chapter III-C of the Reserve Bank of India Act, 1934, imposes reasonable restrictions on the right of individuals, firms and unincorporated associations to carry on the business of acceptance of deposits and advancing or giving loans to the public. There is also a further safeguard that Chapter 111-C is being operated under the supervision and control of the Reserve Bank of India. The business of acceptance of deposits from the public does not fall within entry .30 or entry 32 of List II. of Schedule VII of the Constitution. It falls within entry 45 or in any case under entry 97 of List I of Schedule VII under which only Parliament has power to pass the impugned legislation. Parliament had full competence and power to pass Chapter III- C of the Reserve Bank of India Act, 1934." Mr. G. Viswanatha Iyer, learned counsel for the writ petitioners in WP. Nos. 508 and 534 of 1988 submits that Section 45B is violative of the fundamental right under Article 19(1)(g) of the

Constitution as it restricts the number of depositors and the rate of interest under Section 4(2)(iii) of the Kerala Money Lenders Act, 1958 (hereinafter referred to as the Kerala Act).

The two years' period prescribed under Section 42 is unreasonable.

Under Kerala Act, with effect from 15.10.85 only 14 per cent interest alone could be charged.

In any event, while receiving deposits it was not an offence, making it a criminal liability and directing payment, would amount, to ex post facto law, offending Article 20(1) of the Constitution. In support of this submission, reliance is placed on Chinoy Bottling Co. Pvt. Ltd. v. Assistant Registrar of Companies, Madras, 61 Company Cases 1986 page 770 and Oudh Sugar Mills Ltd. v. Union of India, AIR 1970 SC 1070.

The other learned counsel seriously pressed the point relating to criminal liability and prayed for time to comply with the provisions of Section 45S.

Mr. Anil B. Diwan, learned counsel appearing for Respondent 2 in C.A. No. 447 of 1986, after referring us to the development of law, would submit that it is open to the Government to regulate the economic activities. While examining the validity of such provisions the courts always have regard to the wisdom of the Legislature because that alone has the necessary information and expertise pointing to the need of such a legislation.

In R.K Garg v. Union of India, [1982] 1 SCR 947 at 969-70 this aspect of the matter was highlighted. It was in this view, this Court upheld Maharashtra Debt Relief Act, 1976 in Fatehchand Himmatlal and others v. State of Maharashtra, [1977] 2 SCR 828. If properly analysed, it can be seen that these provisions constitute. a regulatory scheme and not a penal liability.

Much is made of the penal provisions under Section 58B (5A). It is submitted that imprisonment of a recalcitrant debtor is permissible in law. If one goes by the facts of these cases even after 1986, they collect deposits when law required them not to do so.

Under Section 45(1)(bb) deposit has been defined. If as per the definition there are enough sources of deposit there is no reason why the appellants cannot reduce the deposits. If, therefore, the package is reasonable there is no justification to dilute the effect of Section 58B (5A). While examining the scope of the Section it might be contrasted with Section 125 (3) of the Criminal Procedure Code wherein a sufficient cause is provided. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd, [1987] 1 SCC 424 this Court had occasion to consider the adventures indulged by the persons like appellants. It criticised the fraud played by such financial vultures.

This approach was approved in Peerless General Finance and Investment Co. Ltd v. Reserve Bank of India, [1992] 2 SCC 343 @ 354.

The learned counsel also draws our attention to the Non- banking Financial Companies (Reserve Bank) Directions of 1966. They came into force on January 1, 1967. Clause 4 sub-clause (3) specifically provides that the deposit shall be reduced to 25 per cent of the paid-up capital for which two-year period was provided. Similar directions of 1977 known as Non Banking Financial Companies (Reserve Bank) Directions, 1977 came to be issued with effect from 1st of July, 1977.

There were complaints, even then, that the financial companies were not paying interest regularly and the Reserve Bank was requested to help the depositor. Therefore, in the teeth of this provision, to say that suddenly the appellants and the writ petitioners are called upon to reduce, would work hardship and they should not be penalised, is incorrect. They took a calculated risk and, therefore, they had to suffer for their own fault.

In examining the various submissions addressed on behalf of the appellants and the petitioners we propose to examine the same in the following background since it is a law relating to regulation of economic activities. In R.K Garg's case (supra) it is held at pages 969-70-.

> "Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is par- ticularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislature judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Dond, (354 US 457) where Frank further, J. said in his inimitable style:
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> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."
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> The court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many 'problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry' that exact wisdom and nice adaptation of remedy are not always possible and that 'Judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation

particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid."

At page 988 it is held:

"That would depend upon diverse fiscal and economic considerations based on practical necessity and administrative expediency and ,would also involve a certain amount of experimentation on which the Court would be least fitted to pronounce. The court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderable that would enter into the determination that it would be wise for the court not to hazard an opinion where even economists may differ, The court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in Munn v..Illinois, (94 U.S. 13) namely, "that courts do not substitute their social and economic beliefs for the judgment of legislative bodies". The court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to the palpably arbitrary. The court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theater Co. v. City of Chicago, (57 Lawyers' Edition 730). "The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical it maybe, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review.

No doubt, the impugned legislation places restrictions on the right of the appellants to carry on business, but what is essential is to safeguard the rights of various depositors and to see that they are not preyed upon. From the earlier narration, it would be clear that the Reserve Bank of India, right from 1966, has been monitoring and following the functioning of non-banking financial institutions which invite deposits and then utilise those deposits either for trade or for other various industries. A ceiling for acceptance of deposits and to require maintenance of certain liquidity of funds as well as not to exceed borrowings beyond a particular percentage of the net- owned funds have been provided in the corporate sector. But for these requirements, the depositors would be left high and dry without any remedy.

Even the corporate sector was not free from blame. It had done damage to the economy and brought ruination to small depositors. This was why Section 58A in the Companies Act of 1956 came to be

introduced. It is worthwhile to quote the notes on clauses concerning this provision:-

> "It has been the practice of the companies to take deposits from the public at high rates of interest. Experience had shown that in many cases deposits taken by the companies have not been refunded on the due dates, either the companies have gone in liquidation or funds are depleted to such an extent that the companies are not in a position to refund the deposits, it was accordingly considered necessary to control the activities of the companies when accepting deposits from the 'the public".

We approve of the reasoning of the Delhi High Court in Kanta Mehta's case (supra). At pages 798-99 it runs as follows:

> "The danger of allowing deposits to be accepted without regulation is so acute and urgent, that to bind the hands of the Legislature that only one course alone is permissible and not to permit a play of joints would be to totally make it ineffective in meeting the challenge of the social evil. For, it must be remembered that "in the ultimate analysis, the mechanics of any economic legislation has necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class, the processual basis of price fixation has to be accepted in the generality of cases as valid." See Prag Ice and Oil Mills v. Union of India, AIR 1978 SC 1296, para 50). Also such provisions meant to check such evil must be viewed, as Krishna Iyer J. said, through a socially constructive, not legally captious, microscope to discover glaring unconstitutional infirmity, that when laws affecting large chunks of the community are enacted, stray misfortunes are inevitable and that social legislation, without tears, affecting vested rights is virtually impossible. See B. Banerjee v. Smt. Anita Pan, AIR 1975 SC 1146, at pages 1150-51. The stress by learned counsel for the petitioners on the private right of the petitioners to have unrestricted deposits and make advances in any manner they like must receive short shrift, for by now, it is too well settled to be doubted that private rights must yield to be public need and that any form of regulation is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy the Legislature is free to adopt."

May be, Kerala Act restricts the rates of interest under Section 4(2)(iii) but that cannot enable the writ petitioners in W.P. Nos. 508 and 534 of 1988 to disregard these provisions, being the non-banking financial institutions.

Hence, we reject the first of the arguments. As regards the reasonableness of two-year period Section 45(1)(bb) of the Reserve Bank Act defines "deposit" as follows:

> "(bb) "deposit" includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form, but does not include
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> (i) amounts raised by way of share capital;

(ii) amounts contributed as capital by partners of a firm;

(iii) any amount received from,

(iv) any amount received from,

(a) the Development Bank;

(b) a State Financial Corporation established under the State Financial Corporations Act, 1951;

(c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964; or

(d) any other financial institution that may be specified by the Bank in this behalf;

(v) amounts received, in the ordinary course of business, by way of security deposit or dealership deposit;

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is, for the time being in force in any State; and

(vii)any amount received by way of subscriptions in respect of a conventional chit."

Therefore, as rightly argued by Mr. Anil Diwan as per this definition, .if there are enough sources of deposit there is no reason why the appellants and the writ petitioners cannot reduce the deposits. Further, non-banking financial companies are required under clause 4 sub-clause (3) as follows:

"(3) Every non-banking financial company, not being a hire-purchase finance company, or a holding finance company, which on the date of commencement of these directions holds deposits in excess of twenty five per cent of its paid-up capital and free reserves shall secure before the expiry of a period of two years from the date of such commencement, by taking such steps as may be necessary for this purpose, that the deposits, received by the company and outstanding on its books are not in excess of the aforesaid limit."

These directions came into force from 1st of January, 1967. Similar directions came to be issued as Miscellaneous Non- Banking Companies (Reserve Bank) Directions. Clause 5 dealing with acceptance of deposits states as under:

"Acceptance of deposits by miscellaneous non- banking companies:

On and from 1st of July, 1977, no miscellaneous nonbanking company shall:-

(a) receive any deposit repayable on demand or on notice, or repayable after a period of less than six months and more than thirty six months from the date of receipt of such deposit or renew any deposit received by it, whether before or after the aforesaid date unless such deposit, on renewal, is repayable not earlier than six months and not later than thirty-six months from the date of such renewal;

Provided that where a miscellaneous non- banking company has before the 1st July, 1977, accepted deposits repayable after a period of more than thrity six months, such deposits shall, unless renewed in accordance with these directions, be repaid in accordance with the terms of such deposits;

Provided further that nothing contained in this clause shall apply to monies raised by the issue of debentures or bonds.

(b) receive or renew:-

(i) any deposit against an unsecured debenture or any deposit from a shareholder (not being a deposit received by a private company from its shares holders as is referred to in clause (vi) or paragraph 4) or any deposit guaranteed by any person who, at the time of giving such guarantee, was or is a director to the company, if the amount of any such deposits together with the amount of such other deposits of all or any of the kinds referred to in this sub-clause and outstanding in the books of the company as on the date of acceptance or renewal of such deposits, exceeds fifteen per cent of its net owned funds.

(ii) any other deposit, if the amount of such deposit, together with the amount of such other deposits, not being deposits of the kind referred to in sub-clause (i) of this clause already received and outstanding in the books of the company as on the date of acceptance of such deposits, exceeds twenty five per cent of its net owned funds."

If, therefore, this was the position, it cannot be contended that suddenly the companies like the appellant and the petitioners arc called upon to reduce deposits. Even otherwise, the interests of the depositors is the prime concern.

Coming to the last point, as to whether Section 58B (5A) is violative of Article 20(1) of the Constitution, we find, when a similar argument was raised against Section 58A of the Companies Act, that was repelled by this Court in Delhi Cloth and General Mills v. Union of India, [1983] 3 SCR 438 at page 468 which runs thus:

"Mr. G.A. Shah canvassed one more contention. After stating that Rule 3A became operative from April 1, 19',8, he specifically drew attention to the proviso to Rule 3A (1) which required that with relation to the deposits maturing during the year ending on the 31st day of March, 1979, the sum required to be deposited or invested under sub-rule 3A (1) shall be deposited or invested before the 30th day of September, 1978.

> It was then contended that this provision would necessitate depositing 10% of the deposits maturing during the year ending 31st March, 1979 which may have been accepted prior to the coming into force of rule 3A and to this extent the rule has been made retrospective and as there was no power conferred by sec. 58A to prescribe conditions subject to which deposits can be accepted retrospectively Rule 3A is ultra vires sec. 58A. Unquestionably, Rule 3A is to deposit 10% of the deposits maturing during the year in the manner prescribed in Rule 3. Some deposits would be maturing between April 1, 1978 and March 31, 1979. To provide for such marginal situation, a proviso is inserted. Does it to make the rule retroactive? Of course, not. In D.S. Nakara v. Union of India, [1983] 1 SCC 305 a Constitution Bench of this Court has, in this context, observed as under:
>
> "A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing."
>
> Viewed form this angle, the provision can be properly called prospective and not retroactive. Therefore, the contention does not commend to us."

In the light of this, we should hold that the ruling of the Madras High Court in Chinoy Bottling Co. Pvt. Ltd. (supra) is incorrect.

As to the plight of these depositors we need only to quote the case in Peerless General Finance and Investment Co. Ltd., [1987] 1 SCC 424. At paragraph 37 it is held:

> "We would also like to query what action the Reserve Bank of India and the Union of India are taking or proposing to take against the mushroom growth of 'finance and investment companies' offering staggeringly high rates of interest to depositors leading us to suspect whether these companies are not speculative ventures floated to attract unwary and credulous investors and capture their savings. One has only to look at the morning's newspaper to be greeted by advertisements inviting deposits and offering interest at astronomic rates.

On January 1, 1987 one of the national newspapers published from Hyderabad, where one of in happened to be spending the vacation, carried as many as ten advertisements with 'banner headlines', covering the whole of the last page, a quarter of the first page and conspicuous spaces in other pages offering fabulous rates of interest. At least two of the advertisers offered to double the deposit in 30 months. 2000 for 1000, 10,000 for 5,000, they said. Another advertiser offered interes t ranging between 30 per cent to 38 per cent for periods ranging between six months to five years. Almost all the advertisers offered extra interest ranging between 3 per cent to 6 per cent deposits were made during the Christmas-Pongal season. Several of them offered gifts and prizes. If the Reserve Bank of India considers the Peerless Company with eight hundred crores invested in government securities, fixed deposits with National Banks etc. unsafe for depositors, one wonders what they have to say about the mushroom non- banking companies which are accepting deposits, promising most unlikely returns and what action is proposed to be taken to protect the investors. 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 take 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."

And paragraph 42 also requires to be quoted "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 the 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 placed upon persons who are not conversant with the practice of such financial enterprises who pose themselves as benefactors of people."

We may also add that this has been reaffirmed in Reserve Bank of India v. Timex Finance and Investment Co. Ltd., [1992] 2 SCC 344 at page 354.

Therefore, we are in entire agreement with the Delhi High Court.

Since, as we have stated above, all the appellants and writ petitioners were praying for time to comply with these provisions, the matter was adjourned from time to time. Though some of them have complied with the requirements of law yet a few others have not done so. We make it clear that in spite of this indulgence, their failure to comply cannot be countenanced.

We dismiss the appeals and the petitions along with 1A.Nos.1 and 2 in C.A. No.5513 of 1985. However, there shall be no orders as to cost.

N.V.K. Petitions and appeals dismissed.