

**THE BANKING COMPANIES (ACQUISITION AND
TRANSFER OF UNDERTAKINGS) ACT, 1970**

(Act No.50 of 1970)

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For Union Bank of India



M. V. NAIR
Chairman & Managing Director

THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1970

(Act No. 5 of 1970)

[31st March, 1970]

An Act to provide for the acquisition and transfer of the undertakings of certain banking companies, having regard to their size, resources, coverage and organisation, in order to control the heights of the economy and to meet progressively and serve better, the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-first Year of the Republic of India as follows :—

Opportunity of hearing.—Since, the Disciplinary Authority had wide option of imposing any mentioned penalty, it was obligatory for it to give an opportunity of hearing against proposed punishment to the delinquent officer. Opportunity of hearing by the Appellate Authority could not be a substitute for such an opportunity of hearing by the disciplinary Authority before imposing punishment. *Balwant Rai Nayyar v. CBI*, (1994-3) 108 PLR 593 (P&H).

CHAPTER I

PRELIMINARY

S. 1. Short title and commencement.—(1) This Act may be called the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

(2) The provisions of this Act (except Section 21, which shall come into force on the appointed day) shall be deemed to have come into force on the 19th day of July, 1969.

S. 2. Definitions.—In this Act, unless the context otherwise requires:—

- (a) "appointed day" means the 14th day of February, 1970, being the day on which the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1970 (3 of 1970), was promulgated ;
- (b) "banking company" does not include a foreign company within the meaning of Section 591 of the Companies Act, 1956 (1 of 1956) ;
- (c) "commencement of this Act" means the 19th day of July, 1969 ;
- (d) "corresponding new bank", in relation to an existing bank, means the body corporate specified against such bank in column 2 of the First Schedule ;
- (e) "Custodian" means the person who becomes, or is appointed, a Custodian under Section 7 ;
- (f) "existing bank" means a banking company specified in column 1 of the First Schedule, being a company the deposits of which, as shown in the return as on the last Friday of June, 1969, furnished to the Reserve Bank under Section 27 of the Banking Regulation Act, 1949 (10 of 1949), were not less than rupees fifty crores ;

- ¹(fa) "prescribed" means prescribed by regulations made under this Act ;
- (g) "Schedule" means a Schedule to this Act ;
- (h) words and expressions used herein and not defined but defined in the Banking Regulation Act, 1949 (10 of 1949), have the meanings respectively assigned to them in that Act.
- ²(i) Words and expressions used herein and not defined either in this Act or in the Banking Regulation Act, 1949 (10 of 1949) but defined in the Companies Act, 1956 (1 of 1956) shall have the meanings respectively assigned to them in the Companies Act 1956."

Section 2—Notes

Nationalised banks, even though their powers and functions do not partake the character of Government or quasi Government activity, are not merely banking companies but also 'other authorities' within the meaning of State under Article 12 of the Constitution of India. They are, therefore, as such amenable to the writ of mandamus if there is otherwise a case : (1978) 2 Andh. L.T. 48 : (1978) 2 Lab. L.N. 436 (DB) : (1979) 2 S.L.R. 326 (Madh. Pra.) : (1978) 2 S.L.R. 856 (Andh. Pra.) : 1978 Lab. I.C. 1271 (Andh. Pra.—DB).

A corresponding new Bank is not a company or an association or a firm within the meaning of the Travancore Companies Act. It is a body corporate, and therefore a person and as such is liable to any profession tax under the Travancore District Municipalities Act : AIR 1982 Ker. 1 : I.L.R. (1981) 2 Ker. 649 (F.B).

CHAPTER II

³[TRANSFER OF THE UNDERTAKINGS OF EXISTING BANKS AND SHARE CAPITALS OF THE CORRESPONDING NEW BANKS]

S. 3. Establishment of corresponding new banks and business thereof.—(1) On the commencement of this Act, there shall be constituted such corresponding new banks as are specified in the First Schedule.

(2) The paid-up capital of every corresponding new bank constituted under sub-section (1) shall, until any provision is made in this behalf in any scheme made under Section 9, be equal to paid-up capital of the existing bank in relation to which it is the corresponding new bank.

⁴(2-A) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be one thousand five hundred crores of rupees divided into one hundred fifty crores fully paid-up shares of ten rupees each :

Provided that the Central Government may, after consultation with the Reserve Bank and by notification in the Official Gazette, increase or reduce the authorised capital as it thinks fit, so however that after such increase or reduction, the authorised capital shall not exceed three thousand crores or be less than one thousand five hundred crores, of rupees.

(2-B) Notwithstanding anything contained in sub-section (2), the paid-up capital of every corresponding new bank constituted under sub-section (1) may from time to time be increased by—

- (a) such amounts as the Board of Directors of the corresponding new bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, transfer from the reserve fund established by such bank to such paid-up capital ;
- (b) such amounts as the Central Government may, after consultation with the Reserve Bank, contribute to such paid-up capital ;
- (c) such amounts as the Board of Directors of the corresponding new bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, raise by public issue of shares in such manner as may be prescribed, so however that the Central Government shall, at all times, hold not less than fifty-one per cent of the paid-up capital of each corresponding new bank.

⁵(2-BB) Notwithstanding anything contained in sub-section (2), the paid-up capital of a corresponding new bank constituted under sub-section (1) may, from time to time and before any paid-up capital is raised by public issue under clause (c) of sub-section (2-B), be reduced by—

1. Inserted by Act 37 of 1994, s. 2 (w.e.f. 15-7-1994).
2. Inserted by Act 37 of 1994, s. 2 (w.e.f. 15-7-1994).
3. Substitute by Act 37 of 1994, s. 3 (w.e.f. 15-7-1994). Earlier the words 'rupees one thousand five hundred crores' were substituted for the words 'rupees five hundred crores' in the substituted proviso of S. 3(2A) by the Act No. 36 of 1992, S. 2.
4. Substitute by Act 37 of 1994, s. 4 (w.e.f. 15-7-1994).
5. Ins. by Act 8 of 1995, s. 2 (w.e.f. 21-1-1995).

- (a) the Central Government, after consultation with the Reserve Bank, by cancelling any paid-up capital which is lost, or is unrepresented by available assets ;
- (b) the Board of Directors, after consultation with the Reserve Bank and with the previous sanction of the Central Government, by paying off any paid-up capital which is in excess of the wants of the corresponding new bank.

Provided that in a case where such capital is lost, or is unrepresented by available assets because of amalgamation of another corresponding new bank or a corresponding new bank as defined in clause (d) of Section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) with the corresponding new bank, such reduction may be done, either prospectively or retrospectively, but not from a date earlier than the date of such amalgamation.

(2-BBA)(a) A corresponding new bank may from time to time and after any paid-up capital has been raised by public issue under clause (c) of sub-section (2-B), by resolution passed at an annual general meeting of the shareholders entitled to vote, voting in person, or, where proxies are allowed, by proxy, and the votes cast in favour of the resolution are not less than three times the number of the votes, if any, cast against the resolution by the shareholders so entitled and voting, reduce its paid-up capital in any way.

(b) without prejudice to the generality of the foregoing power the paid-up capital may be reduced by:—

- (i) extinguishing or reducing the liability on any of its shares in respect of share capital not paid-up ;
- (ii) either with or without extinguishing or reducing liability on any of its paid-up shares, cancelling any paid-up capital which is lost, or is unrepresented by available assets ; or
- (iii) either with or without extinguishing or reducing liability on any of its paid-up shares, paying off any paid share capital which is in excess of the wants of the corresponding new bank.

(2-BBB) Notwithstanding anything contained in sub-section (2-BB) or sub-section (2-BBA), the paid-up capital of a corresponding new bank shall not be reduced at any time so as to render it below twenty-five per cent of the paid-up capital of that bank as on the date of commencement of the Banking Companies (Acquisition and Transfer of Undertakings) Amendment Act, 1995.]

(2-C) The entire paid-up capital of a corresponding new bank, except the paid-up capital raised by public issue under clause (c) of sub-section (2-B), shall stand vested in and allotted to the Central Government.

(2-D) The shares of every corresponding new bank not held by the Central Government shall be freely transferable :

Provided that no individual or company resident outside India or any company incorporated under any law not in force in India of any branch of such company, whether resident outside India or not, shall at any time hold or acquire by transfer or otherwise shares of the corresponding new bank so that such investment in aggregate exceed the percentage, not being more than twenty per cent, of the paid-up capital, as may be specified by the Central Government by notification in the Official Gazette.

Explanation.—For the purposes of this clause “company” means any body corporate and includes a firm or other association of individuals.

(2-E) No shareholder of the corresponding new bank, other than the Central Government, shall be entitled to exercise voting rights in respect of any shares held by him in excess of one per cent of the total voting rights of all the shareholders of the corresponding new bank.

(2-F) Every corresponding new bank shall keep at its head office a register, in one or more books, of the shareholders (in this Act referred to is the register) and shall enter therein the following particulars :—

- (i) the names, addresses and occupations, if any, of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its denoting number ;
- (ii) the date on which each person is so entered as a shareholders ;
- (iii) the date on which any person ceases to be a shareholder ; and
- (iv) such other particulars as may be prescribed:

⁶[*Provided* that nothing in this sub-section shall apply to the shares held with a depository.]

(2-G) Notwithstanding anything contained in sub-section (2-F), it shall be lawful for every corresponding new bank to keep the register in computer floppies or diskettes subject to such safeguards as may be prescribed.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), a copy of, or extract from, the register, certified to be a true copy under the hand of an officer of the corresponding new bank authorised in this behalf by it, shall, in all legal proceedings, be admissible in evidence.⁷

(4) Every corresponding new bank shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and to contract, and may sue and be sued in its name.

(5) Every corresponding new bank shall carry on and transact the business of banking as defined in clause (b) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949), and may engage in ⁷[one or more of the other forms of business] specified in sub-section (1) of Section 6 of that Act.

(6) Every corresponding new bank shall establish a reserve fund to which shall be transferred to share premiums and the balance, if any, standing to the credit of the reserve fund of the existing bank in relation to which it is the corresponding new bank, and such further sums, if any, as may be transferred in accordance with the provisions of Section 17 of the Banking Regulation Act, 1949 (10 of 1949).

⁸[(7) (i) The corresponding new bank shall, if so required by the Reserve Bank, act as agent of the Reserve Bank at all places in India where it has a branch, for—

(a) paying, receiving, collecting and remitting money, bullion and securities on behalf of any Government in India ; and

(b) undertaking and transacting any other business which the Reserve Bank may from time to time entrust to it.

(ii) The terms and conditions on which any such agency business shall be carried on by the corresponding new bank on behalf of the Reserve Bank shall be such as may be agreed upon.

(iii) If no agreement can be reached on any matter referred to in clause (ii), or if a dispute arises between the corresponding new bank and the Reserve Bank as to the interpretation of any agreement between them, the matter shall be referred to the Central Government and the decision of the Central Government thereon shall be final.

(iv) The corresponding new bank may transact any business or perform any functions entrusted to it under clause (i), by itself or through any agent approved by the Reserve Bank.]

Section 3—Notes

Employees of Union Bank of India being employees of a corporate body under S. 3 which is a separate legal entity are not entitled to protection under Article 311 : 1974 Lab I.C. 1459 (Pat.) : (1973) 1 Lab. L.J. 317.

A nationalised Bank is not a corporation within the narrow meaning of S. 21(12)(b) of the Indian Penal Code. It is no doubt an artificial legal person but not because it is a corporation; I.L.R. (1983) 2 Del. 419 : 1982 Cr. L.J. 2230 (DB).

An employee of a nationalised Bank is a public servant under S. 21 of the Indian Penal Code : 1985 Cr. L.J. 1411. [I.L.R. (1983) 2 Del. 419 and I.L.R. (1983) 2 Del. 458 dissented] See also 1982 Cr. L.J. 780 (Ker—DB).

A newly constituted Bank is a corporation formed not 'under law' but in 'pursuance of law'. It is set up by an intermediary third party acting under law and not by the law itself. It is, therefore, not exempt from the Usurious Loans Act and cannot charge interest from its agriculturist debtors at a rate higher than what is permissible under the Usurious Loans Act : AIR 1983 Andh. Pra. 347 : (1983) 1 Andh. L.T. 357 : (1983) 1 A.P. L.J. (H.C.) 371 : (1983) 2 Andh. W.R. 90 (D.B.), overruled AIR 1988 SC 151.

Nationalised bank.—The nationalised bank was held to be a corporation established by a Central Act and was owned and controlled by the Central Government. Hence, the premises belonging to it would be a public premises. *Ashoka Marketing Ltd. v. PNB*, AIR 1991 SC 855, 869, partly reversing, *Oriental Bank of Commerce v. DDA*, 1982 CrLJ 2230 : (1984) 55 Comp Cas. 81 (Del).

Execution of a decree by Nationalised Bank.—Held, that the cumulative effect of Ss. 3, 4, 11 and 14 would be that the nationalised bank could be treated as a government company for S. 617 of the Companies Act. Accordingly, where a money decree had been granted in favour of a Nationalised Bank and against the State Govt. and private individuals, the State Govt. having stood as a guarantor for private

7. Substituted by Act 1 of 1984, Section 65, for "one or more forms of business" (w.e.f. 15.2.1984).

8. Inserted by Act 1 of 1984, Section 65 (w.e.f. 15.2.1984).

individuals, the bank should be guided by public interest. *State of Gujarat v. CBI, Ahmedabad*, AIR 1987 Guj 113, 122 (DB).

Special Indian Law—The Act was held to be quite legal and valid. Banking Companies Act was a Special Indian Law, hence, S. 4(e) of the A.P. (Andhra Area) Agriculturists Relief Act, 1938 was applicable to the banks nationalised under the Banking Act. Reversing the judgment of A.P. High Court, it was held, that the scaling down of debts due to the bank as provided by Agriculturists Relief Act was not necessary. **Overruling**, *Indian Bank, Alamru v. Krishna Murthy* [AIR 1983 AP 347] it was also observed that in the face of S. 3(27A) [now S. 3(29)] of the General Clauses Act, it could not be said that the expression 'Special Indian Law' in S. 4(e) of the Agriculturists Relief Act meant a law enacted by the British Parliament, specially for India. *Bank of India v. Vijay Transport*, AIR 1988 SC 151, reversing, the decision of A.P. High Court and **overruling**, *Indian Bank, Alamru v. Krishna Murthy*, AIR 1983 AP 347.

Suit for consolidated amount [S. 3(4)].—In a suit for recovery of the amount advanced by the bank, it was observed, that the defendant took amounts from different branches of the bank, suit by the bank for consolidated amount was held maintainable. *Bank of India v. Vinod Kumar Bhalla*, AIR 1988 Del 79.

⁹[S. 3-A. Trust not to be entered on the register.—Notwithstanding anything contained in sub-section (2-F) of Section 3, no notice of any trust, express, implied or constructive, shall be entered on the register, or be receivable, by the corresponding new bank].

¹⁰[Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of the beneficial owners.]

¹¹[S. 3-B. Register of beneficial owners.—The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996), shall be deemed to be a register of shareholders for the purposes of this Act.

Explanation.—For the purposes of section 3, section 3A and this section, the expressions "beneficial owner", "depository" and "registered owner" shall have the meanings respectively assigned to them in clauses (a), (e) and (j) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996)].

S. 4. Undertaking of existing banks to vest in corresponding new banks.—On the commencement of this Act, the undertaking of every existing bank shall be transferred to, and shall vest in, the corresponding new bank.

Section 4—Notes

Nationalised banks are not Government establishments but separate entities : 1977 Cr.LJ 89.

Meaning of 'undertaking'.—Interpreting the meaning of 'undertaking' it was held to mean a going concern with all its rights, liabilities and assets as distinct from various rights and assets composing it. Also held, that from a conjoint reading of Ss. 5 and 6, it was clear that what was sought to be acquired was not an individual item of a property but the capital asset consisting of business of the 'undertaking' as a whole. *P.N.B. Finance Ltd. v. CIT*, 2001 (92) DLT 502 (Del—DB).

S. 5. General effect of vesting.—(1) The undertaking of each existing bank shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property as were immediately before the commencement of this Act in the ownership, possession, power or control of the existing bank in relation to the undertaking, whether within or without India, and all books of accounts, registers, records and all other documents of whatever nature relative thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the existing bank in relation to the undertaking.

(2) If, according to the laws of any country outside India, the provisions of this Act by themselves are not effective to transfer or vest any asset or liability situated in that country which forms part of the undertaking of an existing bank to, or in, the corresponding new bank, the affairs of the existing bank in relation to such asset or liability shall, on and from the commencement of this Act, stand entrusted to the Chief Executive Officer for the time being of the corresponding new bank, and the Chief Executive Officer may exercise all powers and do all such acts and things as may be exercised or done by the existing bank for the purpose of effectively transferring such assets and discharging such liabilities.

(3) The Chief Executive Officer of the corresponding new bank shall, in exercise of the powers conferred on him by sub-section (2), take all such steps as may be required by the laws of any such country

9. Inserted by Act 37 of 1994, s. 5 (w.e.f. 15-7-1994).

10. Inserted by Act 8 of 1997, s. 17 (w.e.f. 15-1-1997).

11. Inserted by Act 8 of 1997, s. 18 (w.e.f. 15-1-1997).

outside India for the purpose of effecting such transfer or vesting, and may either himself or through any person authorised by him in this behalf realise any asset and discharge any liability of the existing bank.

(4) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the commencement of this Act and to which the existing bank is a party or which are in favour of the existing bank shall be of as full force and effect against or in favour of the corresponding new bank, and may be enforced or acted upon as fully and effectually as if in the place of the existing bank the corresponding new bank had been a party thereto or as if they had been issued in favour of the corresponding new bank.

(5) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any business of the undertaking which has been transferred under Section 4, is pending by or against the existing bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the existing bank or of anything contained in this Act but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the corresponding new bank.

(6) Nothing in this Act shall be construed as applying to the assets, rights, powers, authorities and privileges and property, movable and immovable, cash balances and investments in any country outside India (and other rights and in-interests in, or arising out of, such property) and borrowings, liabilities and obligations of whatever kind subsisting at the commencement of this Act, of any existing bank operating in that country if, under the laws in force in that country, it is not permissible for a banking company, owned or controlled by Government, to carry on the business of banking there.

Section 5—Notes

The Board of Directors of the owner Company declared interim dividend three days before the acquisition of the Bank's business. *Held*, it was a mere declaration of intention to pay which the Board could rescind at will. It did not create a debt or liability which is fixed only by law or agreement or judgment: AIR 1984 Del. 315 : (1985) 27 D.L.T. (S.N.) 1 (D.B.) [I.L.R. (1975) 1 Del. 415 : 1975 Rajdh. L.R. 314 reversed].

CHAPTER III

PAYMENT OF COMPENSATION

S. 6. Payment of compensation.—(1) Every existing bank shall be given by the Central Government such compensation in respect of the transfer, under Section 4, to the corresponding new bank of the undertaking of the existing bank as is specified against each such bank in the Second Schedule.

(2) The amount of compensation referred to in sub-section (1) shall be given to every existing bank, at its option,—

- (a) in cash (to be paid by cheque drawn on the Reserve Bank) in three equal annual instalments, the amount of each instalment carrying interest at the rate of four per cent per annum from the commencement of this Act, or
- (b) in saleable or otherwise transferable promissory notes or stock certificates of the Central Government issued and repayable at par, and maturing at the end of—
 - (i) ten years from the commencement of this Act and carrying interest from such commencement at the rate of four and a half per cent per annum, or
 - (ii) thirty years from the commencement of this Act and carrying interest from such commencement at the rate of five and a half per cent per annum, or
- (c) partly in cash (to be paid by cheque drawn on the Reserve Bank) and partly in such number of securities specified in sub-clause (i) or sub-clause (ii) or both, of clause (b), as may be required by the existing bank, or
- (d) partly in such number of securities specified in sub-clause (i) of clause (b) and partly in such number of securities specified in sub-clause (ii) of that clause, as may be required by the existing bank.

(3) The first of the three equal annual instalments referred to in clause (a) of sub-section (2) shall be paid, and the securities referred to in clause (b) of that sub-section shall be issued, within sixty days from the date of receipt by the Central Government of the option referred to in that sub-section, or where no such option has been exercised, from the latest date before which such option ought to have been exercised.

(4) The option referred to in sub-section (2) shall be exercised by every existing bank before the expiry of a period of three months from the appointed day (or within such further time, not exceeding three months, as the Central Government may, on the application of the existing bank, allow) and the option so exercised shall be final and shall not be altered or rescinded after it has been exercised.

(5) Any existing bank which omits or fails to exercise the option referred to in sub-section (2), within the time specified in sub-section (4), shall be deemed to have opted for payment in securities specified in sub-clause (i) of clause (b) of sub-section (2).

(6) Notwithstanding anything contained in this section, any existing bank may, before the expiry of three months from the appointed day (or within such further time, not exceeding three months, as the Central Government may, on the application of the existing bank, allow) make an application in writing to the Central Government for an interim payment of an amount equal to seventy five per cent of the amount of the paid-up capital of such bank, as on the commencement of this Act, indicating therein whether the payment is desired in cash or in securities specified in sub-section (2), or in both.

(7) The Central Government shall, within sixty days from the receipt of the application referred to in sub-section (6), make the interim payment to the existing bank in accordance with the option indicated in such application.

(8) The interim payment made to an existing bank under sub-section (7) shall be set off against the total amount of compensation payable to such existing bank under this Act and the balance of the compensation remaining outstanding after such payment shall be given to the existing bank in accordance with the option exercised, or deemed to have been exercised, under sub-section (4) or sub-section (5), as the case may be :

Provided that where any part of the interim payment is obtained by an existing bank in cash, the payment so obtained shall be set off, in the first instance, against the first instalment of the cash payment referred to in sub-section (2), and in case the payment so obtained exceeds the amount of the first instalment, the excess amount shall be adjusted against the second instalment and the balance of such excess amount, if any, against the third instalment of the cash payment.

(9) Any payment purported to have been made to an existing bank under sub-section (3) of Section 15 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 (22 of 1969), shall be deducted by the Central Government from the amount of the interim payment made to such existing bank under sub-section (7), or where no such interim payment has been made, from the total amount of the compensation due to such existing bank, and the amount so deducted shall be paid by the Central Government to the corresponding new bank.

CHAPTER IV

MANAGEMENT OF CORRESPONDING NEW BANKS

S. 7. Head office and management.—(1) The head office of each corresponding new bank shall be at such place as the Central Government may, by notification in the Official Gazette, specify in this behalf, and, until any such place is so specified, shall be at such place at which the head office of the existing bank, in relation to which it is the corresponding new bank, is on the commencement of this Act, located.

(2) The general superintendence, direction and management of the affairs and business of a corresponding new bank shall vest in a Board of Directors which shall be entitled to exercise all such powers and do all such acts and things as the corresponding new bank is authorised to exercise and do.

(3) (a) As soon as may be after the appointed day, the Central Government shall, in consultation with the Reserve Bank, constitute the first Board of Directors of a corresponding new bank, consisting of not more than seven persons, to be appointed by the Central Government, and every Director so appointed shall hold office until the Board of Directors of such corresponding new bank is constituted in accordance with the scheme made under Section 9 :

Provided that the Central Government may, if it is of opinion that it is necessary in the interests of the corresponding new bank so to do, remove a person from the Membership of the first Board of Directors and appoint any other person in this place.

(b) Every Member of the first Board of Directors (not being an officer of the Central Government or of the Reserve Bank) shall receive such remuneration as is equal to the remuneration which a Member of the Board of Directors of the existing bank was entitled to receive immediately before the commencement of this Act.

(4) Until the first Board of Directors is appointed by the Central Government under sub-section (3), the general superintendence, direction and management of the affairs and business of a corresponding new bank shall vest in a Custodian, who shall be the Chief Executive Officer of that bank and may exercise all powers and do all acts things as may be exercised or done by that bank.

(5) The Chairman of an existing bank holding office as such immediately before the commencement of this Act, shall be the Custodian of the corresponding new bank and shall receive the same emoluments as he was receiving immediately before such commencement :

Provided that the Central Government may, if the Chairman of an existing bank declines to become, or to continue to function as, a Custodian of the corresponding new bank, or, if it is of opinion that it is necessary in the interests of the corresponding new bank so to do, appoint any other person as the Custodian.

dian of a corresponding new bank and the Custodian so appointed shall receive such emoluments as the Central Government may specify in this behalf.

(6) The Custodian shall hold office during the pleasure of the Central Government.

Section 7—Notes

The Directors of the nationalised Bank having control, superintendence and management of the Bank are not 'in the service' or 'in the pay' of the Bank since there is no relationship of master and servant between them and the Bank. No sanction for their prosecution under S. 197, Cr. P.C. is required : I.L.R. (1983) 2 Del. 419 (DB) : 1982 Cr.LJ 2230.

General Superintendence and management of the Bank.—Where the Syndicate Bank was taken over under the Act, it was held, that pre-existing orders relating to service-conditions were deemed regulations u/s. 19(3) and had full force and effect till framing of new regulations u/s. 19(1). Power of general superintendence and management of the bank u/s. 7 by board of directors was not unlimited and was regulated by Ss. 12(2) and 19(3) of the Act. Under S. 12(2), staff of the takeover banking company could be treated as staff of the new bank on the pre-existing terms and conditions of service till framing of new Regulations. Hence, administrative order dated 18-5-1971 and circular order dated 12-12-1978, issued by the new bank, altering fixation of pay of the promoted junior officers, were null and void as they were not issued u/s. 19(1). *Syndicate Bank v. Sri P. Bhaskar*, 1995 (1) An.W.R. 252 (AP—DB)

The power of general superintendence and management was not unlimited and could not override other provisions of the Act. Pre-existing service conditions were held deemed regulations and could be altered only after consultation with RBI and with prior sanction of the Central Government. Refixation of salary on promotion without following procedure could not be saved by invoking Ss. 7(2) and 12(2). *Syndicate Bank v. Sri P. Bhaskar*, 1994 Lab IC 2152 (AP).

Effect of voluntary retirement.—With a view to downsize their staff, the nationalised banks floated a voluntary retirement scheme, which required the employees to apply, and the authorities had absolute discretion to accept or reject their requests. The retirement had to take effect only after acceptance of written request. It was held that the scheme was only an invitation to offer, and the application filed by the employees was an offer, which they could withdraw before acceptance despite the contractual bar. *Bank of India v. O.P. Swarnakar*, AIR 2003 SC 858.

Change in the terms of VRS [S. 7(2)].—Where the petitioner had applied for voluntary retirement, no consent or approval of petitioners was obtained while changing pension regulations, it was held, that since no consent/approval of pension optees was obtained prior to acceptance of petitioner's request to go on voluntary retirement, subsequent change could not be said to be legal and valid. *C.S. Sanon v. Union of India*, 2002 (1) AD (Del) 49.

S. 8. Corresponding new banks to be guided by the Directions of the Central Government.—Every corresponding new bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give.

Section 8—Notes

Central Government can suggest model regulations under this section, apart from S. 19 : 1979 Jab. L.J. 342 : 1979 M.P.L.J. 561 : (1979) 2 S.L.R. 326 : (1979) 2 Lab. L.J. 401.

From a bare reading of the Act and its scheme, it was apparent that though the bank was a corporate body created by a statute, but, in fact, it would be the governmental junctions, being performed by it. Provisions were designed to discharge the sovereign and legal functions of a State through the instrumentality or agency of the statutory corporate body, i.e., banks. A retired employee of a nationalised bank would be a specified landlord. *Vijaykumar Bhambari v. Ram Nath Bajaj*, AIR 1990 P&H 208, 217, 218.

Preconditions for directions.—Under S. 8 bank can only be guided by directions of the Govt. and it is not obligatory that each and every direction should be followed by the bank. The pre-conditions for such directions are—(1) they should relate to the policy matters involving public interest and (2) they should emanate only after consultation with the Governor of RBI. In the facts of the case, circular, dated 1-11-1988 insisting that promotion should be given effect retrospectively in cases of delayed promotion was held illegal. 1996 Lab IC 102 : (1995) 2 Andh WR 313 (AP—DB).

S. 9. Power of Central Government to make scheme.—(1) The Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:—

- (a) the capital structure of the corresponding new bank; [* * *]¹²
- (b) the constitution of the Board of Directors, by whatever name called, of the corresponding new bank and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient ;
- (c) the reconstitution of any corresponding new bank into two or more corporations, the amalgamation of any corresponding new bank with any other corresponding new bank or with another banking institution, the transfer of the whole or any part of the undertaking of a¹³ [corresponding new bank to any other corresponding new bank or banking institution] or the transfer of the whole or any part of the undertaking of any other banking institution to a corresponding new bank ;
- (d) such incidental, consequential and supplemental matters as may be necessary to carry out the provisions of this Act.

¹⁴[(3) Every Board of Directors of a corresponding new bank constituted under any scheme made under sub-section (1), shall include—

- (a) not more than two whole-time Directors to be appointed by the Central Government after consultation with the Reserve Bank ;
- (b) one Director who is an official of the Central Government to be nominated by the Central Government :

Provided that no such Director shall be a Director of any other corresponding new bank.

*Explanation.—*For the purposes of this clause, the expression “corresponding new bank” shall include a corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) ;

- (c) one Director who is an Officer of the Reserve Bank to be nominated by the Central Government on the recommendation of the Reserve Bank.

*Explanation.—*For the purpose of this clause, “an Officer of the Reserve Bank” includes an officer of the Reserve Bank who is deputed by that Bank under Section 54-AA of the Reserve Bank of India Act, 1934 (2 of 1934) to any institution referred to therein :

- (d) not more than two Directors to be nominated by the Central Government from amongst the Securities and Exchange Board of India established under Section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the National Bank for Agriculture and Rural Development established under Section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), public financial institutions as specified in sub-section (1), or notified from time to time under sub-section (2) of Section 4-A of the Companies Act, 1956 (1 of 1956) and other institutions established or constituted by or under any Central Act or incorporated under the Companies Act, 1956 and having not less than fifty one per cent. of the paid-up share capital held or controlled by the Central Government ;
- (e) one Director, from among such of the employees of the corresponding new bank who are workmen under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947) to be nominated by the Central Government in such manner as may be specified in a scheme made under this section ;
- (f) one Director, from among the Employees of the corresponding new bank who are not workmen under clause (s) of Section 2 of the Industrial Disputes Act, 1947, (14 of 1947) to be nominated by the Central Government after consultation with the Reserve Bank ;
- (g) one Director who has been a Chartered Accountant for not less than fifteen years to be nominated by the Central Government after consultation with the Reserve Bank ;
- (h) subject to the provisions of clause (i), not more than six Directors to be nominated by the Central Government ;
- (i) where the capital issued under clause (c) of sub-section (2-B) of Section (3) is—
 - (1) not more than twenty per cent of the total paid-up capital, not more than two Directors.

12. Certain words omitted by Act 37 of 1994, s. 6 (w.e.f. 3-4-1995). Earlier, the words ‘rupees one thousand five hundred crores’ were substituted for the words ‘rupees five hundred crores’ in the omitted part of S. 9(2)(a) by S. 2(b) of the Act No. 36 of 1992.

13. Substituted by Act 66 of 1988, Section 31, for “corresponding new bank to any other banking institution” (w.e.f. 30.12.1988).

14. Substituted by Act 37 of 1994, s. 6 (w.e.f. 3-4-1995).

(II) more than twenty per cent. but not more than forty per cent of the total paid-up capital, not more than four Directors,

(III) more than forty per cent of the total paid-up capital, not more than six Directors,

to be elected by the shareholders, other than the Central Government, from amongst themselves :

Provided that on the assumption of charge after election of any such Directors under this clause, equal number of Directors nominated under clause (h) shall retire in such manner as may be specified in the scheme.

(3-A) The Directors to be nominated under clause (h) or to be elected under clause (i) of sub-section (3) shall—

(A) have special knowledge or practical experience in respect of one or more of the following matters namely :—

(i) agricultural and rural economy,

(ii) banking,

(iii) co-operation,

(iv) economics,

(v) finance,

(vi) law,

(vii) small-scale industry,

(viii) any other matter the special knowledge of, and practical experience in, which would, in the opinion of the Reserve Bank, be useful to the corresponding new bank ;

(B) represent the interests of depositors ; or

(C) represent the interests of farmers, workers and artisans.

(3-B) Where the Reserve Bank is of the opinion that any Director of a corresponding new bank elected under clause (i) of sub-section (3) does not fulfil the requirements of sub-section (3-A), it may, after giving to such Director and the bank a reasonable opportunity of being heard, by order, remove such Director and on such removal, the Board of Directors shall co-opt any other person fulfilling the requirements of sub-section (3-A) as a Director in place of the person so removed till a Director is duly elected by the shareholders of the corresponding new bank in the next annual general meeting and the person so co-opted shall be deemed to have been duly elected by the shareholders of the corresponding new bank as a Director.]

(4) The Central Government may, after consultation with the Reserve Bank, make a scheme to amend or vary any scheme made under sub-section (1).

¹⁵[(5) On and from the date of coming into operation of a scheme made under this section with respect to any of the matters referred to in clause (c) of sub-section (2) or any matters incidental, consequential and supplemental thereto,—

(a) the scheme shall be binding on the corresponding new bank or corporations or banking institutions, and also on the Members, if any, the depositors, and other creditors and Employees of each of them and on any other persons having any right or liability in relation to any of them including the trustees or other persons, managing or in any other manner connected with, any provident fund or other fund maintained by any of them ;

(b) the properties and assets of the corresponding new bank, or as the case may be, of the banking institution shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vested in, and the liabilities of the corresponding new bank, or, as the case may be, of the banking institution shall, by virtue of, and to the extent provided in the scheme, stand transferred to, and become the liabilities of, the corporation or corporations brought into existence by reconstitution of the banking institution or the corresponding new bank, as the case may be.

Explanation.—¹⁶[1] In this section, "banking institution" means a banking company and includes the State Bank of India or a subsidiary bank.]

15. Inserted after renumbering original sub-section (5) as sub-section (6), by Act 1 of 1984, Section 66 (w.e.f. 15.2.1984).

16. Explanation numbered as *Explanation I* and *Explanation II* inserted by Act 66 of 1988, Section 31 (w.e.f. 30.12.1988).

¹⁷[*Explanation II*.—For the purposes of this section, the expression “corresponding new bank” shall include a corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).]

¹⁸[(6) Every scheme made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days ¹⁹[which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.]

Section 9—Notes

Validity of settlement of debt due to the bank.—In the case of debts involving more than Rs. 10 lakhs, the bank issued a circular empowering a managing committee to approve recommendations. Chairman of the managing committee alone approved a recommendation. Subsequently, the managing committee disapproved the proposal set forth by the debtor company. It was *held*, that the parties could not be said to have entered into a valid compromise. *PNB v. Purewall & Associates Ltd.*, AIR 2002 Raj 13 (DB).

Object.—Object of S. 9(3)(b) in leaving choice to the Central Government as to the mode, election or nomination, was to enable it to reasonably exercise its discretion as to give best representation to every category of person mentioned. (1990) 1 Lab LJ 352 : (1990) 2 Lab LN 236 (SC).

Appointment of non-workman director.—The object of S. 9 was to empower the Central Government to make a scheme for constitution of Board of directors so as to include representatives of employees and other specified categories. Change in the mode of appointment of non-workman director of nationalised bank from out of panel submitted by Association of non-workman employees to the appointment of any employee irrespective of his union affiliation by circular dated 23-8-1982, was *held* to be *ultra vires* the Act and Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980. [Clause 3(c)]. *All India Bank Officers' Confederation v. UOI*, AIR 1989 SC 2045.

Writ not to be issued to pay special allowances to the bank employees.—The provision was not made in the Act allowing benefits to the bank employees available to the Govt. employees. It was *held*, that the payment of special allowance to the bank employees equal to the Govt. employees could not be enforced by issuing a writ of *mandamus*. *All India Bank Officer's Confederation v. UCO Bank*, (1997) 2 SCT 517 : 1997 Lab IC 73 (Cal).

CHAPTER V

MISCELLANEOUS

S. 10. Closure of accounts and disposal of profits.—(1) Every corresponding new bank shall cause its books to be closed and balanced on the 31st day of December ²⁰[or such other date in each year as the Central Government may, by notification in the Official Gazette, specify] and shall appoint, with the previous approval of the Reserve Bank, Auditors for the audit of the audit of its accounts :

²¹[*Provided* that with a view to facilitating the transition from one period of accounting to another period of accounting under this sub-section, the Central Government may, by order published in the Official Gazette, make such provisions as it considers necessary or expedient for the closing and balancing of, or for other matters relating to, the books in respect of the concerned years.]

(2) Every Auditor of a corresponding new bank shall be a person who is qualified to act as an Auditor of a company under Section 226 of the Companies Act, 1956 (1 of 1956) and shall receive such remuneration as the Reserve Bank may fix in consultation with the Central Government.

(3) Every Auditor shall be supplied with a copy of the annual balance-sheet and profit and loss account and a list of all books kept by the corresponding new bank, and it shall be the duty of the Auditor to examine the balance-sheet and profit and loss account with the accounts and vouchers relating thereto, and in the performance of his duties, the Auditor:—

17. *Explanation* numbered as *Explanation I* and *Explanation II* inserted by Act 66 of 1988, Section 31 (w.e.f. 30.12.1988).

18. Inserted after renumbering original sub-section (5) as sub-section (6), by Act 1 of 1984, Section 66 (w.e.f. 15.2.1984).

19. Substituted by Act 1 of 1984, Section 66 (w.e.f. 15.2.1984) for “which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following”.

20. Substituted by Act 66 of 1988, Section 32, for “of each year” (w.e.f. 30.12.1988).

21. Inserted by Act 66 of 1988 (w.e.f. 30.12.1988).

- (a) shall have, at all reasonable times, access to the books, accounts and other documents of the corresponding new bank,
 - (b) may, at the expense of the corresponding new bank, employ accountants or other persons to assist him in investigating such accounts, and
 - (c) may, in relation to such accounts, examine the Custodian or any Officer or Employee of the corresponding new bank.
- (4) Every Auditor of a corresponding new bank shall make a report to the Central Government upon the annual balance-sheet and accounts and in every such report shall state:—
- (a) whether, in his opinion, the balance-sheet is a full and fair balance-sheet containing all the necessary particulars and is properly drawn up so as to exhibit a true and fair view of the affairs of the corresponding new bank, and in case he had called for any explanation or information, whether it has been given and whether it is satisfactory ;
 - (b) whether or not the transactions of the corresponding new bank, which have come to his notice, have been within the powers of that bank ;
 - (c) whether or not the returns received from the offices and branches of the corresponding new bank have been found adequate for the purpose of his audit ;
 - (d) whether the profit and loss account shows a true balance of profit or loss for the period covered by such account ; and
 - (e) any other matter which he considers should be brought to the notice of the Central Government.

²²[Explanation I.—For the purposes of this Act—

- (a) the balance-sheet shall not be treated as not disclosing a true and fair view of the affairs of the corresponding new bank, and
- (b) the profit and loss account shall not be treated as not showing a true balance of profit or loss for the period covered by such account,

merely by reason of the fact that the balance-sheet or, as the case may be, the profit and loss account, does not disclose any matters which are by the provisions of the Banking Regulation Act, 1949 (10 of 1949), read with the relevant provisions of this Act or any other Act, not required to be disclosed.

Explanation II.—For the purposes of this Act the accounts of the corresponding new bank shall not be deemed as having not been properly drawn up on the ground merely that they do not disclose certain matters if:—

- (i) those matters are such as the corresponding new bank is, by virtue of any provision contained in the Banking Regulation Act, 1949 (10 of 1949), read with the relevant provisions of this Act, or any other Act, not required to disclose ; and
- (ii) the provisions referred to in clause (i) are specified in the balance-sheet and profit and loss account of the corresponding new bank or in the Auditor's report.]

(5) The report of the Auditor shall be verified, signed and transmitted to the Central Government.

(6) The Auditor shall also forward a copy of the audit report to the corresponding new bank and to the Reserve Bank.

(7) After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and all other matters for which provision is necessary under any law, or which are usually provided for by banking companies, a corresponding new bank ²³[may out of its net profits deal as a dividend and retain the surplus if any.]

²⁴[(7-A) Every corresponding new bank shall furnish to the Central Government ²⁵[and to the Reserve Bank] the annual balance-sheet, the profit and loss account, and the Auditor's report and a report by its Board of Directors on the working and activities of the bank during the period covered by the accounts.]

(8) The Central Government shall cause every Auditor's report and report on the working and activities of each corresponding new bank to be laid ²⁶[as soon as may be after they are received before each House of Parliament ²⁷[* * *]].

22. *Explanation* inserted by Act 1 of 1984, Section 67 (w.e.f. 15.2.1984).

23. Inserted Act 37 of 1994, s. 7 (w.e.f. 15-7-1994).

24. Inserted by Act 1 of 1984, Section 67 (w.e.f. 15.2.1984).

25. Inserted by Act 37 of 1994, s. 7 (w.e.f. 15-7-1994).

26. Substituted by Act 1 of 1984, Section 67 (w.e.f. 15.2.1984) for "for not less than thirty days before each House of Parliament as soon as may be after each such report is received by the Central Government".

27. The words "while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions" omitted by Act 81 of 1985, Section 9 (w.e.f. 1.5.1986).

²⁸[(9) Without prejudice to the foregoing provisions, the Central Government may, at any time, appoint such number of Auditors as it thinks fit to examine and report on the accounts of a corresponding new bank and the Auditors so appointed shall have all the rights, privileges and authority in relation to the audit of the accounts of the corresponding new bank which an Auditor appointed by the corresponding new bank has under this section.]

²⁹[S. 10-A. Annual general meeting.—(1) A general meeting (in this Act referred to as an annual general meeting) of every corresponding new bank which has issued capital under clause (c) of sub-section (2-B) of Section 3 shall be held at the place of the head office of the bank in each year at such time as shall from time to time be specified by the Board of Directors :

Provided that such annual general meeting shall be held before the expiry of six weeks from the date on which the balance-sheet, together with the profit and loss account and Auditor's report is under sub-section (7A) of Section 10, forwarded to the Central Government or to the Reserve Bank whichever date is earlier.

(2) The shareholders present at an annual general meeting shall be entitled to discuss the balance-sheet and the profit and loss account of the corresponding new bank made up to the previous 31st day of March, the report of the Board of Directors on the working and activities of the corresponding new bank for the period covered by the accounts and the Auditor's report on the balance-sheet and accounts."]

S. 11. Corresponding new bank deemed to be an Indian company.—For the purposes of the Income-tax Act, 1961 (43 of 1961), every corresponding new bank shall be deemed to be an Indian company and a company in which the public are substantially interested.

Section 11—Notes

A bank after acquisition does not constitute an establishment under the Central Government : (1969 Act) 1978 Lab. I.C. 273 : (1978) 1 Lab. L.N. 277 : (1977) 35 Fac. L.R. 260 : 48 Com. Cas. 800 : 53 F.J.R. 363 (Ker) : (1970 Act) : 1977 Cr. L.J. 889 (Bom). Also see cases under Ss. 2 and 3.

Section 11. A Bank on nationalisation does not constitute an establishment under the Central Government. *Canara Bank v. Appellate Authority*, (1978) 48 Com. Cases 800.

S 12. Removal of Chairman from office.—(1) Every person holding office, immediately before the commencement of this Act, as Chairman of an existing bank shall, if he becomes Custodian of the corresponding new bank, be deemed, on such commencement, to have vacated office as such Chairman.

(2) Save as otherwise provided in sub-section (1), every Officer or other Employee of an existing bank shall become, on the commencement of this Act, an Officer or other Employee, as the case may be, of the corresponding new bank and shall hold his office or service in that bank on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and continue to do so unless and until his employment in the corresponding new bank is terminated or until his remuneration, terms or conditions are duly altered by the corresponding new bank.

(3) For the persons who immediately before the commencement of this Act were the trustees for any pension, provident, gratuity or other like fund constituted for the Officers or other Employees of an existing bank, there shall be substituted as trustees such persons as the Central Government may, by general or special order, specify.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any Officer or other Employee from an existing bank to a corresponding new bank shall not entitle such Officer or other Employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

Section 12—Notes

An employee of a private Bank, after acquisition, continues to be governed by his old service conditions. He cannot, after receiving notice of retirement, maintain a suit for declaration for correcting date of birth and his right to continue in service : (1969 Act) : (1980) 1 Lab. L.J. 290 : 39 Fac. L.R. 360 : (1979) 2 Cal. H.N. 334.

²⁸. Inserted by Act 1 of 1984. Section 67 (w.e.f. 15.2.1984).

²⁹. Inserted by Act 37 of 1994, s. 8 (w.e.f. 15-7-1994).

Dismissal of an employee by the nationalised Bank should be by a speaking order : (1969) 55 F.J.R. 249 (Mad—DB). See also 1979 Jab. L.J. 342.

Banking is a purely commercial activity. The officers of the nationalised Banks are not public officers. No sanction under S. 197, Cr.P.C. is required for their prosecution; I.L.R. (1983) 2 Del. 458 : 1982 Cr.L.J. 2230 (Del.). Also see 1985 Cr. L.J. 1411 : 1982 Cr.L.J. 780 (Ker—DB).

Procedure to be followed.—The employment of nationalised bank would be a public employment. Therefore, terms and conditions of service should be regulated within four corners of Regulations. Stoppage of salary for a month of an employee of a nationalised bank without following the procedure in regulations was held invalid. (1977) 4 Cal HC (N) 567.

Scope and powers of S. 12(2).—Section 12(2) implied a power in the corresponding new bank to alter terms and conditions of service of an officer/employee whose services were continued by that provision under the new bank. Such terms and conditions could be laid down by making regulations u/s. 19(1) : 1979 Lab IC (NOC) 90 : 1979 Jab LJ 342 (MP—DB).

Central Government had power u/s. 19 to make regulations for terms and conditions of service of officers appointed after bank nationalisation, hence, it could not be said that such terms and conditions could be prescribed or altered only by mutual agreement between bank and its employees and not by framing regulations by the Govt. 1984 Lab IC (NOC) 124 (Cal).

Validity of classification.—Classification of the employees into two categories, i.e., those falling under rules 1 and 2 of the 1979—service regulations for age of retirement and those falling under rule 3 thereof signified the tests of valid classification laid down under Articles 14 and 16 of the constitution and rule 3 could not be declared as unconstitutional. *B.S. Yadav v. Central Bank of India*, AIR 1987 SC 1706 : 1987 Lab IC 1327 : (1987) 3 ATC 750 (SC).

Revision of banking pay scales.—Regarding fitment of management trainees under revised pay scale, it was held that the action taken by bank was found *bona fide* and not arbitrary and the appellants could not insist to be retained under old pay scale when entire staff was being brought over to new pay structure. It would create anomalies and injustice to other staff. (1993) 6 JT 537 (SC).

³⁰[S. 12-A. Bonus.—(1) No Officer or other Employee [other than an Employee within the meaning of clause (13) of Section 2 of the Payment of Bonus Act, 1965 (21 of 1965)] of a corresponding new bank shall be entitled to be paid any bonus.

(2) No employee of a corresponding new bank, being an employee within the meaning of clause (13) of Section 2 of the Payment of Bonus Act, 1965 (21 of 1965), shall be entitled to be paid any bonus except in accordance with the provisions of that Act.

(3) The provisions of this section shall have effect notwithstanding any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in any other provision of this Act or in the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force or any practice, usage or custom or any contract, agreement, settlement, award or other instrument.]

S. 13. Obligations as to fidelity and secrecy.—(1) Every corresponding new bank shall observe, except as otherwise required by law, the practices and usages customary among bankers, and, in particular, it shall not divulge any information relating to or to the affairs of its constituents except in circumstances in which it is, in accordance with law or practices and usages customary among bankers, necessary or appropriate for the corresponding new bank to divulge such information.

(2) Every Director, Member of a local Board or a Committee, or Auditor, Adviser, Officer or other Employee of a corresponding new bank shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

(3) Every Custodian of a corresponding new bank shall, as soon as possible make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

S. 14. Custodian to be public servant.—Every Custodian of a corresponding new bank shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code (45 of 1860).

S. 15. Certain defects not to invalidate acts of proceedings.—(1) All acts done by the Custodian, acting in good faith, shall, notwithstanding any defect in his appointment or in the procedure, be valid.

(2) No act or proceeding of any Board of Directors or a local Board or Committee of a corresponding new bank shall be invalid merely on the ground of the existence of any vacancy in, or defect in the constitution of, such Board or Committee, as the case may be.

(3) All acts done by a person acting in good faith as a Director or Member of a local Board or Committee of a corresponding new bank shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in any law for the time being in force :

Provided that nothing in this section shall be deemed to give validity to any act by a Director or Member of a local Board or Committee of a corresponding new bank after his appointment has been shown to the corresponding new bank to be invalid or to have terminated.

S. 16. Indemnity.—Every custodian of a corresponding new bank and every Officer of the Central Government or of the Reserve Bank and every Officer or other Employee of a corresponding new bank, shall be indemnified by such bank against all losses and expenses incurred by him in or in relation to the discharge of his duties except such as have been caused by his own wilful act or default.

(2) A Director or Member of a local Board or Committee of a corresponding new bank shall not be responsible for any loss or expense caused to such bank by the insufficiency or deficiency of the value of, or title to, any property or security acquired or taken on behalf of the corresponding new bank, or by the insolvency or wrongful act of any customer or debtor, or by anything done in or in relation to the execution of the duties of his office, unless such loss, expense, insufficiency or deficiency was due to any wilful act or default on the part of such Director or Member.

³¹[**S. 16-A. Arrangement with corresponding new bank on appointment of Directors to prevail.**—(1) Where any arrangement entered into by a corresponding new bank with a company provides for the appointment by the corresponding new bank of one or more Directors of such company, such provision and any appointment of Directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to the Company, and any provision regarding share qualification, age limit, number of Directorship, removal from office of Directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any Director appointed by the corresponding new bank in pursuance of the arrangement as aforesaid.

(2) Any Director appointed as aforesaid shall—

- (a) hold office during the pleasure of the corresponding new bank and may be removed or substituted by any person by order in writing of the corresponding new bank ;
- (b) and incur any obligation or liability by reason only of his being a Director or for anything done or omitted to be done in good faith in the discharge of his duties as a Director or anything in relation thereto ;
- (c) not be liable to retirement by rotation and shall not be taken into account for computing the number of Directors liable to such retirement.]

S. 17. References to existing banks on and from the commencement of this act.—Any reference to any existing bank in any law, other than this Act, or in any contract or other instrument shall, in so far as it relates to the undertaking which has been transferred by Section 4, be construed as a reference to the corresponding new bank.

S. 18. Dissolution.—No provision of law relating to winding up of corporations shall apply to a corresponding new bank and no corresponding new bank shall be placed in liquidation save by order of the Central Government and in such manner as it may direct.

Section 18—Notes

Exclusion of time from limitation period.—In a recovery suit, the plaintiff bank informed the defendants about outstanding dues and the defendants acknowledged their liability but sought six months time to clear it. It was *held*, that such unqualified acknowledgement with a promise to pay gave rise to a new cause of action u/s. 18. The time during which one of the defendants had been absent from India had also to be excluded u/s. 15(2) of the Limitation Act. Therefore, the suit was within the period of limitation. *Syndicate Bank v. General Exports Combinations*, 2000 (84) DLT 240 (Del).

Central Government establishment-exempt.—*Held*, that SBI and other nationalised banks were establishments under the Central Govt.' as the Central Government had deep and persuasive control over them. Therefore, shops and establishments Acts of Tamil Nadu, A.P. and Kerala did not apply to them. *C.V. Raman v. Management of BOI*, AIR 1988 SC 1369, reversing, the decisions of Kerala and A.P. High Courts.

31. Inserted by Act 1 of 1984, Section 68 (w.o.f. 15.2.1984).