IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 25TH DAY OF OCTOBER 2022 / 3RD KARTHIA, 1944

WA NO. 425 OF 2022

APPELLANT/S:

DHANALAXMI BANK LTD
REPRESENTED BY ITS MANAGING DIRECTOR, NAICKANAL JUNCTION, THRISSUR, KERALA, PIN - 650001

BY ADVS.
RAFIQ DADA (SR.)
SUNIL SHANKER
VIDYA GANGADHARAN

RESPONDENT/S:

1 K.N.MADHUSOODANAN
S/O. P.K. NARAYANA
PANICKER,SREENIKETHAN,KALANJOOR.P.O.,KONNI,
PATHANAMTHITTA,KERALA, PIN - 689694

2 P. MOHANAN
S/O PARAMESWARAN PILLAI K.,
AADITHYA, SUDARSAN LANE,
POOJAPPURA JUNCTION,
POOJAPPURA, P.O., TRIVANDRUM,
KERALA , PIN - 695012

3 PRAKASH D.L
PRAKASH BHAVAN, PERUMKOOR,
VEMBAYAM, TRIVANDRUM,
KERALA , PIN - 695615

4 RESERVE BANK OF INDIA
BANERJI ROAD, ERNAKULAM,
KERALA
REPRESENTED BY ITS REGIONAL MANAGER, PIN - 682018

5 BOARD OF DIRECTORS OF DHANLAXMI BANK LTD
REPRESENTED BY THE MANAGING DIRECTOR,
MR. SHIVAN J.K., NAICKANAL JUNCTION,
THRISSUR, PIN - 680001

6 C.K. GOPINATH

DIRECTOR OF DHANLAXMIBANK AND
MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR , PIN - 680001

7 DR. CAPTAIN SUSEELA MENON R
INDEPENDENT DIRECTOR OF DHANLAXMIBANK AND
MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR , PIN - 680001

8 G. SUBROMANIAIYER
FORMER PART-TIME CHAIRMAN OF DHANLAXMI BANK AND
FORMERMEMBER, NOMINATION AND REMUNERATION
COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR , PIN - 680001

9 G. RAJAGOPALAN NAIR
INDEPENDENT DIRECTOR OF DHANLAXMI BANK AND
MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR , PIN - 680001

10 NOMINATION AND REMUNERATION COMMITTEE OF
DHANLAXMI BANK
CORPORATE OFFICE, THRISSUR,
REPRESENTED BY ITS CHAIRMAN ,
DR. CAPTAIN SUSEELA MENON R.,
NAICKANAL JUNCTION, THRISSUR , PIN - 680001

11 MR.VENKATESH H
COMPANY SECRETARY,
DHANLAXMI BANK,
NAICKANAL JUNCTION,
THRISSUR , PIN - 680001
BY ADVS.
RANJITH THAMPAN (SR.)
SUMATHI DANDAPANI (SR.)
SIVASHANKAR PANICKER
MILLU DANDAPANI
SANTHOSH MATHEW

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25.10.2022, ALONG WITH WA.432/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
TUESDAY, THE 25TH DAY OF OCTOBER 2022 / 3RD KARTHIA, 1944
WA NO. 432 OF 2022

APPELLANT/S:

DHANLAXMI BANK LTD
AGED 40 YEARS
DHANLAXMI BANK LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
NAICKANAL JUNCTION, THRISSUR, KERALA PIN - 695001
BY ADVS.
RAFIQ DADA (SR.)
SUNIL SHANKER
VIDYA GANGADHARAN

RESPONDENT/S:

1. P.K. VIJAYAKUMAR @ PUTHALATHKUTTAN NAIR VIJAYAKUMAR
AGED 70 YEARS
S/O P.K. NAIR, RESIDING AT 'MADHAVAM',
VANIYAN LANE, POONKUNNAM,
THRISSUR, PIN - 680002
2. RESERVE BANK OF INDIA,
BANERJI ROAD, ERNAKULAM,
REPRESENTED BY ITS REGIONAL MANAGER, PIN - 682018
3. BOARD OF DIRECTORS OF DHANLAXMI BANK LTD
REPRESENTED BY THE MANAGING DIRECTOR,
MR. SHIVAN J.K.,
NAICKANAL JUNCTION,
THRISSUR, PIN - 680001
4. G. SUBRAMANIA IYER
FORMER PART-TIME CHAIRMAN OF DHANLAXMI BANK AND
FORMER MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR, PIN - 680001
5. J.K. SHIVAN
MANAGING DIRECTOR OF DHANLAXMI BANK,
NAICKANAL JUNCTION,
THRISSUR, PIN - 680001
6. C.K. GOPINATH
DIRECTOR OF DHANLAXMI BANK AND
MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR, PIN – 680001

7 DR. CAPTAIN SUSEELA MENON R
INDEPENDENT DIRECTOR OF DHANLAXMI BANK AND
MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR, PIN - 680001

8 G. RAJAGOPALAN NAIR
INDEPENDENT DIRECTOR OF DHANLAXMI BANK AND
MEMBER, NOMINATION AND REMUNERATION COMMITTEE,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR, PIN - 680001

9 NOMINATION AND REMUNERATION COMMITTEE OF DHANLAXMI BANK,
CORPORATE OFFICE,
THRISSUR, REPRESENTED BY ITS CHAIRMAN,
DR. CAPTAIN SUSEELA MENON R.,
NAICKANAL JUNCTION,
THRISSUR, PIN - 680001

10 MR.VENKATESH H
COMPANY SECRETARY,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR, , PIN - 680001

11 DR. G. JAGAN MOHAN
RBI ADDITIONAL DIRECTOR, DHANLAXMI BANK,
DHANLAXMI BANK, NAICKANAL JUNCTION,
THRISSUR, PIN - 680001

12 D.K. KASHYAP
RBI ADDITIONAL DIRECTOR, DHANLAXMI BANK,
DHANALAKSHMI BANK, NAICKANAL JUNCTION,
THRISSUR, PIN - 680001

13 SECURITIES AND EXCHANGE BOARD OF INDIA
THROUGH ITS MANAGER, 6TH FLOOR, FINANCE TOWER,
KALOOR, KOCHI, KERALA, PIN - 682017

14 REGISTRAR OF COMPANIES
THROUGH THE DEPUTY REGISTRAR,
COMPANY LAW BHAWAN,
BMC ROAD, THRIKKAKARA P.O.,
KAKKANAD, KOCHI, KERALA, PIN - 682021

BY ADVS.
P. CHIDAMBARAM (SR.)
SMT. SUMATHI DANDAPANI (SR.)
SIVASHANKAR PANICKER
MILLU DANDAPANI
SANTHOSH MATHEW
K. M. JAMALUDHEEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25.10.2022, ALONG WITH WA.425/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Shaji P. Chaly, J.

The captioned writ appeals are filed by respondent No. 2, M/s. Dhanalakshmi Bank Ltd., Thrissur challenging the common interim order passed by the learned Single Judge in W. P. (C) Nos. 19758 and 20425 of 2021 dated 09.03.2022, whereby the learned Single Judge held that the writ petitions are maintainable under Article 226 of the Constitution of India, in a challenge made by the appellant. Since the subject issue cropped up for consideration in both the appeals are typical, with the concurrence of all the parties, the appeals are heard together. The issue is whether the rejection of the nomination of the writ petitioners for the directorship of the appellant under Section 160 of the Companies Act, 2013 by the appellant bank, allegedly being a statutory violation, is a subject matter amenable for writ jurisdiction.

2. Brief facts are required to be discussed in order to consider the said issue; Petitioners 1 and 2 in W. P. (C) No. 19758 of 2021 leading to W. A. No. 425 of 2022 / respondents 1 and 2 herein are shareholders of the appellant - M/s. Dhanalakshmi Bank Ltd., however, the 3rd petitioner / the 3rd respondent herein, is not a shareholder. Petitioner in

W. P. (C) No. 20425 of 2021 leading to writ appeal No. 432 of 2022 / the 1st respondent herein, is a shareholder of the appellant Bank and formerly a Director.

3. Reliefs sought for by the petitioners in W. P. (C) No. 19758 of 2021 are that (i) issue a writ of mandamus commanding Dhanalakshmi Bank Ltd; Board of Directors of Dhanalakshmi Bank Ltd., represented by its Managing Director; and the Nomination and Remuneration Committee of Dhanalakshmi Bank Ltd., to place the candidature of the petitioners before the General Body of M/s. Dhanalakshmi Bank Ltd. scheduled to be held on 29.09.2021 for consideration as Directors, in accordance with Section 160(2) of the Companies Act, 2013, within a time frame to be fixed by this Court; (ii) declare that the said petitioners have a right under Section 160 of the Companies Act, 2013 to place their candidature before the members during the AGM of the 2nd respondent scheduled to be held on 29.09.2021; (iii) to quash Ext. P3 communication dated 20.09.2021 whereby the Board of Directors of the appellant Bank had in its meeting held on 20.09.2021, decided not to place the notice received from the 1st petitioner, Sri. K. N. Madhusoodananan, under Section 160 of the Companies Act, 2013 in

the ensuing Annual General meeting of the appellant Bank or any adjournment thereof; and (iv) to declare that the petitioners are fit and proper candidates meeting the criteria laid down by the 1st respondent.

4. W. P. (C) No. 20425 of 2021 is filed by the writ petitioner / 1st respondent seeking (i) a direction to the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI) and the Registrar of Companies (ROC), Kochi, Kerala, to issue appropriate direction to the appellant Bank and the Board of Directors of the appellant Bank to comply with the corporate governance requirements while conducting the 94th Annual General Meeting; (ii) to direct if need be, the RBI and the SEBI to decide issues raised by the petitioner therein in Exts. P6 and P7 complaints / representations; (iii) to direct the RBI, SEBI and ROC to issue appropriate directions to the appellant Bank and its Board; and the Nomination and Remuneration Committee of the appellant Bank to identify appropriate candidates and place their recommendations before the members during the 94th AGM; (iv) to direct the SEBI and the ROC to issue appropriate directions to the appellant and its Board to reassess the performance of the petitioner Sri. P. K. Vijayakumar and recommend him for appointment as

Director to be placed before the 94th AGM; and (v) to quash Ext. P3 letter dated 20.09.2021 rejecting the application of the petitioner by the Board of Directors submitted under Section 160 of the Companies Act, 2013.

5. Brief material facts which are relevant for disposal of the appeals discernible from the writ petitions are as follows:-

6. The contention advanced by the petitioners in W. P. (C) No. 19758 of 2021 is that the appellant Dhanalakshmi Bank Ltd., its Board of Directors and the Nomination Remuneration Committee is bound to discharge their statutory responsibilities under Section 160 of the Companies Act, 2013, to inform the General Body Meeting of the Dhanalakshmi Bank with respect to the candidature of the 1st petitioner for the office of the Director as mandated under Section 160(2) of the Companies Act. It is also the contention of the said petitioners that under Section 160 of the Companies Act, a person eligible for appointment to the post of Director at the General Body of the company can place a notice in writing at the company's registered office, not less than 14 days before the General Body meeting signifying his candidature as a Director.

7. It is also the case of the petitioners that the 1st petitioner has given a notice in writing and deposited Rs. 1,00,000/- and therefore the appellant company registered under the Companies Act has a statutory duty to inform the members of the General Body of the candidature of such person. According to the petitioners, apart from the 1st petitioner, 3 others had placed their candidature i.e. (i) Sri. B. Ravindran Pillai; (ii) Sri. P. K. Vijayakumar (petitioner in the connected writ petition), who was the Director of the appellant Bank; and (iii) Sri. P. Mohanan. Petitioners state that all the candidates have satisfied the statutory requirements under Section 160(1) of the Companies Act, 2013.

8. The paramount contention advanced by the petitioners is that under Section 178 of the Companies Act, 2013, Nomination and Remuneration Committee is to be constituted and the duty of the said committee under Section 178(2) of Act 2013 is to identify persons qualified to become Directors of the company, following the criteria laid down and recommend to the Board for their appointment. That apart it is pointed out that neither Section 160 nor Section 178 of Act 2013 provides any right to the Board of Directors to reject or refuse the placement of the names before the General Body. They have

statutorily complied with Section 160(1) of the Companies Act, 2013, which is also the submission.

9. According to the petitioners, the RBI has constituted a Committee for streamlining the appointment to the post of Directors in banking companies coming under the Banking Regulation Act, 1949, which is referred to as 'Dr. Ganguly Group Report' and based on the 'Ganguly Group Report', the RBI is exercising powers under Section 35A of the Banking Regulation Act, 1949 and has issued directions to the Scheduled Banks and Public Sector Banks, evident from Ext. P1.

10. The sum and substance of the contention advanced by the petitioners is that as can be seen from Ext. P1, the RBI prescribes that the persons offering themselves as Directors must fulfill a specific criteria before they are appointed on the Board of Banks. It is also contended that as per Ext. P1, Private Banks were directed to undertake due diligence to determine the suitability of persons for appointment based on the qualification, expertise, track record, integrity and other 'fit and proper' criteria. Petitioners have also produced Ext. P1(a) the 'fit and proper' criteria formulated by the RBI and the prescribed format of declaration.

11. Therefore, the contention advanced is that when the application was submitted by the 1st petitioner and others, nominating themselves to the post of Directors, the Bank had no other option than to place it before the General Body and to have not done so and rejecting the request of the 1st petitioner and others is a clear violation of the statutory prescriptions contained under Sections 160 and 178 of the Companies Act, 2013.

12. The petitioner in the other writ petition has also raised similar contentions; as we have pointed out above, the essential relief sought in the writ petition is in respect of the rejection of the nomination offered by the petitioner by the Director Board of the Bank. Petitioner therein has also contended that petitioner is the most suitable person and he was formerly the Director General of Income Tax (Rtd.), former Insurance Ombudsman, Independent External Monitor (IEM) for Visakhapatnam Steel Plant Ltd. and FACT Ltd. Udyogamandal, Kochi.

13. True, petitioner therein Sri. P. K. Vijayakumar has also contended that the RBI and the SEBI have failed to take prompt steps against the appellant Bank as well as its Director Board for not

adhering to the Corporate Governance Standards and ignoring the scheme for selection of fit and proper candidates under the 2004 notification, and the SEBI (LODR) Regulations, 2015.

14. The basic pleading raised in the said writ petition is that the petitioner is aggrieved for not including his name for reappointment even though he was declared fit and proper on 24.05.2021. It is also pointed out that the appellant Bank has failed to address the issues raised by the RBI and has not recommended the names of a single new candidate for the office of Director.

15. That apart it is pointed out that on 16.09.2021, the petitioner aggrieved by the malafide actions of the Directors nominated by the Reserve Bank of India, namely 11^{th} and 12^{th} respondents, informed the Chairman of SEBI in regard to the manner in which the performance evaluation of the petitioner was conducted. Petitioner therein has also raised the contention concerning the alleged violation of Section 160 of the Companies Act, 2013.

16. The appellant Bank has raised a preliminary objection regarding the maintainability of the writ petitions. In fact, when the writ petitions were posted on 29.09.2021 for admission, a learned

Single Judge admitted the writ petitions and after considering the judgment of the Hon'ble Apex Court in **Federal Bank Ltd. v. Sagar Thomas and Others** reported in (**2003) 10 SCC 733** and **Sulochana Gupta and Another v. RBG Enterprises Pvt. Ltd.** reported in **2020 SCC Online KER 4153** held that it is trite law that a writ petition can be entertained even against a private body when it becomes necessary to compel such body to enforce any statutory obligations or such obligations of public nature and therefore it was stated that prima facie, the writ petitions are maintainable under Article 226 of the Constitution of India.

17. Anyhow, the Bank had challenged the said order in W. A. Nos. 1322 of 2021 and 1325 of 2021, but by order dated 20.10.2021, this Bench noticed that the opinion expressed by the learned Single Judge was solely prima facie and after taking note of the submission of learned counsel on both sides, observed that the question of maintainability can be heard as a preliminary issue and therefore remitted the matter for reconsideration of the question of maintainability of the writ petitions.

18. It was in the said backdrop, the learned Single Judge

considered the issue and passed the impugned order holding that the writ petitions are maintainable, after taking into consideration the provisions of various statutes referred to above and the law laid down by the Hon'ble Apex Court in multiple judgments; the operative portion of the order read as follows:-

> “34. The discussions above lead to a situation where it must be found that there is a mandatory statutory duty to consider the application/proposal for appointment as directed in a general meeting. The power of the general body under Section 160 has not been delegated to the Board of Directors. Such a delegation would necessarily affect the very constitution of the Board, which ultimately is a representative body which must conduct the affairs of a banking company. A banking company, whether in the private sector or in the public sector, is handling public money, public finance and also has to necessarily comply with several statutory requirements including conducting business in accordance with certain national policies. It cannot hence be said that there is no public law element at all in the functioning of a Bank. There can be cases where individual actions relating to contract with a depositor or a customer who has taken a loan may arise which necessarily is in the field of a private contract. We are not concerned here with a singular business transaction, but with the very functioning of the company and its conduct of the business through a properly constituted Board of Directors. Actions in this regard cannot be termed to be purely in the private

field. It is the constitution of the Board which finally determines the way the Bank functions in the public domain. There can be no controversy as regards the fact that a Bank is functioning in the public domain. Its activities are not confined to identified private persons.

35. In such circumstances, I am of the opinion that where the constitution of the Board of Directors is mandated to be in a particular form by the Statutes which govern the very existence of the banking company, it cannot be said to be an affair in a private field, which is not amenable to writ jurisdiction. Hence, I am of the considered opinion that the writ petitions are maintainable to challenge such statutory violations. It is made clear that all the findings rendered on facts are rendered only for the purpose of determining the question of maintainability and will not in any way prejudice any of the parties at the time of final hearing of the writ petitions."

19. It is thus challenging the legality and correctness of the common interim order in the writ petitions, the appeals are preferred by the Bank.

20. We have heard learned Senior Counsel Sri. Rafiq Dada assisted by Sri. Sunil Shankar for the appellants, learned Senior Counsel Sri. P. Chidambaram assisted by Sri. Shivshankar R. Panicker and learned Senior Counsel Sri. Ranjith Thampan for the writ

petitioners/party respondents, learned Senior Counsel Smt. Sumathi Dandapani assisted by Sri. Millu Dandapani for the Reserve Bank of India, Sri. Santhosh Mathew for the Directors of the appellant Bank and Sri. K. M. Jamaludheen for the Securities and Exchange Board of India and perused the pleadings and material on record.

21. According to the appellant Bank, the learned Single Judge has not appropriately taken into account the contentions advanced by the appellant Bank, the RBI and the SEBI. It is also submitted that the appellant is a private Bank and is not amenable to the writ jurisdiction conferred under Article 226 of the Constitution of India. It is further contended that the appellant is not a statutory body or an instrumentality or agency of the Government; that the appellant is not a company financed and / or owned by the Government; that the appellant is not being run on Government funding; that the shares of the appellant are held by private shareholders; and that the appellant does not discharge a public duty or a positive obligation of a public nature.

22. It is also contended that the learned Single Judge erred in interpreting Section 160 of the Companies Act, 2013 and further it is contended that the learned Single Judge failed to appreciate that no

person has a right under Section 160 of the Companies Act, 2013 to have his candidature for Directorship place directly before the General Body Meeting in the case of a banking company. That apart it is contended that the learned Single Judge failed to consider and appreciate that Section 35A of the Banking Regulation Act provides RBI the power to issue directions inter alia to secure the proper management of banking companies, which directions the banking companies are bound to comply with.

23. It is also contended that the learned Single Judge failed to consider and appreciate that in terms of the RBI circular read with 'Dr. Ganguly Group Report' in case of banking companies; (i) there is a requirement for the Directors to have requisite professional qualifications, special experience, specified technical skills etc.; (ii) there is a requirement for the Directors to have high integrity and an impeccable track record; (iii) accordingly Banks have been mandated to undertake a process of due diligence to determine the suitability of persons seeking appointment as Director; (iv) such due diligence of candidates seeking appointment as Director is to be done by the Nomination and Remuneration Committee of the Bank; and (v) based

on the due diligence and observations / findings of the Nomination and Remuneration Committee, a decision would be taken on whether or not to accept a person's candidature for Directorship.

24. That apart it is contended that the learned Single Judge has failed to appreciate the provisions of the Companies Act, 2013, the Banking Regulation Act, 1949 and the RBI circular to have an appropriate consideration of the issues. That apart it is contended that the judgments rendered by the Hon'ble Apex Court as well as this Court were not appreciated properly in order to arrive at the conclusions in the common interim order. It is also the contention of the appellant Bank that the subject issue with respect to the election in the AGM of the appellant, a private bank, can never be said to be an action having any public element so as to consider the said issues in a writ petition under Article 226 of the Constitution of India.

25. It is the further contention of the appellant Bank that in W. P. (C) No. 20425 of 2021 filed by Sri. P. K. Vijayakumar, a former Director, relief sought for on account of Exts. P6 and P7 complaints / representations submitted against the conduct of the RBI nominees are not relevant or germane to have been considered along with the issue

with respect to the rejection of the nomination offer made by the petitioners. It is also pointed out that such a relief was incorporated in the said writ petition with the intention of making an attempt to maintain the writ petition before the writ court.

26. On the other hand, learned counsel appearing for the writ petitioners have submitted that since reliefs are sought against the RBI, SEBI and ROC, Kochi, the writ petition is perfectly maintainable. It is also pointed out that since there is failure on the part of the Directors of the appellant banking company to adhere to the requirements of Section 160 of the Companies Act, 2013, being a mandatory statutory violation, it is well settled that a writ petition is maintainable under law. Other contentions are also raised with respect to the factual circumstances involved in the matter and argued that there is a real element of public duty involved in the matter since the appellant Bank is discharging public duty by accepting deposits from the public and granting loans to the public. That apart it is contended that the Board of Directors of the appellant has no power or authority to reject an application submitted under Section 160 of the Companies Act, 2013. It is also contended that under Section 152(2) of the Companies Act,

2013, every Director shall be appointed by the company in the general meeting and therefore there is a clear statutory requirement for the Directors to place the applications of the petitioners before the General Body of the appellant Bank.

27. It is also pointed out that in order to maintain a writ petition the appellant Bank need not be a Public Sector Bank; and further that the appellant Bank is regulated by RBI, SEBI and ROC, who are all having statutory powers and duties and therefore, the appellant Bank is amenable to writ jurisdiction. It is also contended that in view of the clear violations of the provisions of law and failure on the part of the appellant Bank to adhere to the statutory requirements deliberated above, the learned Single Judge was right in holding that the writ petitions are maintainable under Article 226 of the Constitution of India.

28. Learned Senior Counsel for the RBI has submitted that the RBI has no manner of power under the Banking Regulation Act, 1949, or under the Companies Act 2013 to interfere with the rejection of the nomination and election to the Director Board. Still, the power of the RBI is only to ensure that the Directors elected to the Director Board

are having the requisite qualifications in contemplation of Section 10A(2) and (2-A) of the Banking Regulation Act, 1949.

29. Learned counsel for the SEBI has also submitted that it has no manner of power to interfere with the election of the Directors or rejection of the nomination. That apart, learned Standing Counsel has submitted that, apart from Section 24 of the Companies Act, 2013 dealing with the power of SEBI to regulate the issue and transfer of securities, it has no power to interfere with the election to Directorship of the appellant company.

30. Therefore, it can be seen that the arguments advanced by the RBI and SEBI are in support of the contentions advanced by the appellant Bank. But learned Senior Counsel appearing for the writ petitioners have stated that under the Banking Regulations Act, 1949 as well as under the Securities and Exchange Board of India Act, 1992 read along with the Regulations 2015, the said bodies have various functions to be discharged in so far as the functioning of a company registered under the Companies Act is concerned and if the company is not adhering to the requirements, it has got every power to interfere with the activities of the company.

31. We have evaluated the rival submissions made across the Bar.

32. Before referring to the relevant provisions discussed above, at the outset, we place on record that the appeals are fought by the rival parties mainly relying upon the judgments of the Hon'ble Apex Court and the High courts respectively in **LIC v. Escorts Ltd. [(1986) 1 SCC 264]**, **Binny Ltd. v. V. Sadasivan [(2005) 6 SCC 657]**, **Ramakrishna Mission v. Kago Kunya [(2019) 16 SCC 303]**, **Federal Bank Ltd. v. Sagar Thomas [(2003) 10 SCC 733]**, **Chanda Deepak Kochhar v. ICICI Bank Ltd. [2020 SCC Online Bom. 374]**, **Sulochana Gupta v. RBG Enterprises Pvt. Ltd. [2020 SCC Onliine Ker. 4153]**, **Praga Tools Corporation v. Shri C. A. Imanual [(1969) 1 SCC 585]**, **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. R. Rudani [(1989) 2 SCC 691]**, **State of U. P. v. Johri Mal [(2004) 4 SCC 714]**, **K. K. Saksena v. International Commission on Irrigation & Drainage [(2015) 4 SCC 670]**, **Rejendra Menon v. Cochin Stock Exchange Limited [1989 SCC Online Ker. 539 (Single Judge) and 1990 SCC Online Ker. (Division Bench)]** and **Sri. Ramdas Motor Transport**

Ltd. v. Tadhi Adhinarayana Reddy [(1997) 5 SCC 446].

33. So also, learned Senior Counsel for the writ petitioners have relied upon the judgment of a Full bench of this Court in **John Kuriakose v. State of Kerala [(2015) 1 KLT 720 (FB)]**, a Division Bench judgment of this Court in **the President, Peechi Service Co-operative Bank and Another v. Tessy Varghese and Others [(2015) 4 KLT 919]**, the judgment in **Y. Sleebachan v. State of Kerala and Others** (judgment rendered by us) **Manu/KE/2283/2020**.

34. To put it differently, the learned Senior Counsel on either side have submitted that the judgments referred to above are rendered by the Hon'ble Apex Court as well as the High Courts in their favour. In order to understand the contentions appropriately, we believe it is necessary to refer to specific provisions of the statutes discussed above.

35. Section 1(4)(a) of the Companies Act, 2013 makes it clear that it applies to companies incorporated under the Act 2013 or under any previous company law. Clause (c) of Section 1(4) makes it clear that the provisions apply to the banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking

Regulation Act, 1949.

36. Section 160 of Act 2013 deals with right of persons other than retiring Directors to stand for Directorship, which reads thus:-

> "**160. Right of persons other than retiring directors to stand for directorship.—** (1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.
>
> (2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed."

37. It is true, from the said provision, that definite parameters are prescribed concerning how an application for Directorship is to be

submitted and considered. Section 178 of Act 2013 deals with the Nomination and Remuneration Committee and Stakeholders Relationship Committee. Sub-section (1) thereto specifies that the Board of Directors of every listed company and such other class shall constitute a Nomination and Remuneration Committee consisting three or more non-executive Directors out of which not less than one half shall be independent Directors.

38. It is important to note that sub-section (2) of Section 178 stipulates that the Nomination and Remuneration Committee shall identify persons who are qualified to become Directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every Director's performance.

39. It is equally important to bear in mind that as per sub-section (3) of Section 178, the Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes, and independence of a Director and recommend to the Board a policy, relating to the remuneration for the Directors, key managerial personnel and other employees. Other prescriptions are also contained

under the said provision.

40. The Companies (Appointment and Qualification of Directors) Rules, 2014, is a Rule constituted also taking into consideration Section 160 of the Companies Act, 2013. Rule 13 of the said Rules dealing with notice of candidature of a person for Directorship specifies that the company shall, at least 7 days before the general meeting, inform its members of the candidature of a person for the office of a Director or the intention of a member to propose such person as a candidate for that office, (i) by serving individual notices on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and (ii) by placing notice of such candidature or intention on the website of the company, if any.

41. On a conjoint reading of Section 160, Section 178 of the Companies Act, 2013 and Rule 13 of the Rules 2014, it is evident that a clear cut procedure is prescribed in so far as the notice of candidature is concerned. Whatever that be, the primary question to be considered is whether the rejection of nomination and election to the Director

Board of the appellant company, a private banking company, has any public law element in order to consider the alleged violations exercising the powers conferred under Article 226 of the Constitution of India.

42. In so far as the writ petition leading to W. A. No. 425 of 2022 is concerned, the reliefs sought for in the writ petition is against the rejection of the nomination of the 1st petitioner therein by the Director Board of the company alone. In so far as the writ petition leading to W. A. No. 432 is concerned, as we have pointed out above, in the said writ petition, Exts. P6 and P7 complaints submitted by Sri. P. K. Vijayakumar, to the RBI as well as SEBI is produced and seeks relief against the same.

43. In view of the contention advanced by the learned Senior Counsel for the appellant Bank that the complaints made in Exts. P6 and P7 have no manner of co-relationship with the issue in respect to the rejection of nomination and they are incorporated in order to make an attempt to see that the writ petition is made maintainable, we are inclined to discuss the contents of Exts. P6 and P7.

44. In Ext. P6 complaint made to the Deputy Governor,

Regulation, RBI, Mumbai, Sri. P. K. Vijayakumar, the petitioner has stated that the RBI nominee Mr. G. Jagan Mohan, particularly targets him along with a couple of other Directors and even though he has addressed concern to the part time Chairman of the Bank, the Chairman has ignored the representation and therefore he is compelled to bring it to the notice of the Regulator. On going further through Ext. P6 said to be a whistle blower's complaint, it can be seen that allegations are made against the RBI nominee Sri. G. Jagan Mohan and Sri. D. K. Kashyap. It is true that various allegations are made against the said persons, however the said letter dated 23.06.2021 has nothing to do with the rejection of nomination by the Director Board of the appellant Bank. So also, in Ext. P7 complaint dated 16.09.2021 addressed to the Chairman, SEBI, Mumbai, allegations are made against the RBI nominees.

45. Therefore, it can be seen that the complaint of Sri. P. K. Vijayakumar filed before the RBI as well as the SEBI have no manner of connection, or somewhat totally detached from the paramount and essential relief sought for in the writ petitions, that is to say, the rejection of nomination as per Ext. P3 communication dated

20.09.2021.

46. Now, in the above background, we propose to consider whether the RBI and the SEBI have any manner of control in so far as the nomination to the post of Directorship of the appellant Bank is concerned. Section 10A(2) of the Banking Regulation Act, 1949, reads as follows:-

> "**10A. Board of directors to include persons with professional or other experience.-**
>
> (2) Not less than fifty-one per cent of the total number of members of the Board of directors of a banking company shall consist of persons, who--
>
> (a) shall have special knowledge or practical experience in respect of one or more of the following matters, namely:--
>
> (i) accountancy,
>
> (ii) agriculture and rural economy,
>
> (iii) banking,
>
> (iv) co-operation,
>
> (v) economics,
>
> (vi) finance,
>
> (vii) law,
>
> (viii) small-scale industry,
>
> (ix) any other matter the special knowledge of, and practical experience in, which would, in the opinion

of the Reserve Bank, be useful to the banking company:

Provided that out of the aforesaid number of directors, not less than two shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry; and

(b) shall not--

(1) have substantial interest in, or be connected with, whether as employee, manager or managing agent,--

(i) any company, not being a company registered under section 25 of the Companies Act, 1956 (1 of 1956), or

(ii) any firm,

which carries on any trade, commerce or industry and which, in either case, is not a small-scale industrial concern, or

(2) be proprietors of any trading, commercial or industrial concern, not being a small-scale industrial concern.

(2-A) 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,-

(i) no director of a banking company, other than its chairman or whole-time director, by whatever name called, shall hold office continuously for a period exceeding eight years;

(ii) a chairman or other whole-time director of a banking company who has been removed from office as such chairman, or whole-time director, as the case may be, under the provisions of this Act shall also cease to be a director of the banking company and shall also not be eligible to be appointed as a director of such banking company, whether by election or co-option or otherwise, for a period of four years from the date of his ceasing to be the chairman or whole-time director, as the case may be.

(3) If, in respect of any banking company the requirements, as laid down in subsection (2), are not fulfilled at any time, the Board of directors of such banking company shall re-constitute such Board so as to ensure that the said requirements are fulfilled.

(4) If, for the purpose of re-constituting the Board under sub-section (3), it is necessary to retire any director or directors, the Board may, by lots drawn in such manner as may be prescribed, decide which director or directors shall cease to hold office and such decision shall be binding on every director of the Board.

(5) Where the Reserve Bank is of opinion that the composition of the Board of directors of a banking company is such that it does not fulfill the requirements of subsection (2), it may, after giving to such banking company a reasonable opportunity of being heard, by an order in writing, direct the banking company to so re-constitute its Board of directors as to ensure that the said requirements are fulfilled and, if within two months from the date of receipt of that order, the banking company does not comply with the directions made by the Reserve Bank, that Bank may, after determining, by lots drawn in such manner as may be

> prescribed, the person who ought to be removed from the membership of the Board of directors, remove such person from the office of the director of banking company and with a view to complying with the provision of sub-section (2) appoint a suitable person as member of the Board of directors in the place of the person so removed whereupon the person so appointed shall be deemed to have been duly elected by the banking company as its director.”

47. On a reading of the said provisions, it is clear that it deals with a situation wherein the elected Directors do not satisfy the requirements of the said provisions. Therefore it cannot be said that the said provision is a regulatory mechanism employed by the RBI in order to deal with the situation of nomination made by any person to Directorship.

48. So also going through the provisions of the Securities and Exchange Board of India Act, 1992, various powers and functions are conferred on the Board for regulating their business in stock exchanges, security market, registering and regulating the work of stock brokers, registering and regulating the working of the depositors, participants, custodians etc. and prohibiting fraudulent and unfair trade practices relating to security markets. It also has power to suspend the

trading of any security and it has the power to regulate or prohibit issue of prospectus, offer documents and advertisement soliciting money for issue of securities. However, we could not locate any provision under the Act 1992 empowering the Board to interfere with the rejection of a nomination or an election conducted to the Directorship of a banking company.

49. We have pointed out earlier that the sole power of SEBI is contained under Section 24 of the Companies Act to regulate the issue and transfer of securities, which has nothing to do with the nomination made for Directorship in the appellant towards the process of election in the annual general meeting.

50. Therefore, in our considered opinion, the prayer sought for in W. P. (C) No. 20425 of 2021 leading to W. A. No. 432 of 2022, in regard to Exts. P6 and P7 complaints filed before the RBI as well as SEBI against its nominee Directors, are not at all connected or related to the fundamental issue raised in the writ petition on account of the rejection of nomination. We also wish to state that the matters with respect to Exts. P6 and P7 are not at all germane to decide the issue with regard to the rejection of the nomination of the petitioners.

51. This question was considered by the Hon'ble Apex Court in **Begum Sabiha Sultan v. Nawab Mohd. Mansur Ali Khan and Others [(2007) 4 SCC 343]** and held as follows:-

> “11. This position was reiterated by this Court in T. Arivandandam Vs. T.V. Satyapal & Anr. [(1978) 1 S.C.R. 742] by stating that what was called for was a meaningful --- not formal --- reading of the plaint and any illusion created by clever drafting of the plaint should be buried then and there. In Official Trustee, West Bengal & Ors. Vs. Sachindra Nath Chatterjee & Anr. [(1969) 3 S.C.R. 92], this Court approving the statement of the law by Mukherjee Acting Chief Justice in Hirday Nath Roy Vs. Ramchandra Barna Sarma, [I.L.R. 48 Calcutta 138 F.B.] held:
>
> > "Before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject- matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."
>
> 12. Reading the plaint as a whole in this case, there cannot be much doubt that the suit is essentially in relation to the relief of partition and declaration in respect of the properties

situate in Village Pataudi, Gurgaon, outside the jurisdiction of court at Delhi. It is no doubt true that there is an averment that an alleged oral will said to have been made at Delhi by the deceased mother and presumably relied on by defendants 1 and 2 was never made. But on our part, we fail to understand the need for claiming such a negative declaration. After all, the plaintiff can sue for partition, rendition of accounts and for setting aside the alienation effected by defendant No. 2 without the junction of the plaintiff on a claim that the plaintiff is also one of the heirs of the deceased mother. If in such a suit, the defendants propound any oral will as excluding the plaintiff from inheritance, the burden would be on them to establish the making of such an oral will and the validity thereof. The negative declaration sought for by the plaintiff appears to us to be totally superfluous and unnecessary in the circumstances of the case. It may be noted that it is not the case of the plaintiff that an oral will was made at Delhi. It is the case of the plaintiff that no oral will was made at Delhi. It is debatable whether in such a situation it can be said that any cause of action arose at all within the jurisdiction of the court at Delhi. On a reading of the plaint, the trial judge and the Division Bench have come to the conclusion that in substance the suit was one relating to immovable property situate outside the jurisdiction of the trial court in Delhi and hence the plaint had been presented in a court having no jurisdiction to entertain the suit. We are inclined to agree with the said understanding of the plaint by the trial judge and Division Bench, on a reading of the plaint as a whole."

52. So also, in **ING Vysya Bank Ltd. v. Modern India Ltd. and Another [2008 SCC Online Bom. 103]**, it is held as follows:-

> "8. …...........The Court will decide the issue by looking at the kernel and disregarding the chaff. The existence of a jural relationship of licensor and licensee or, as the case may be, of landlord and tenant; the nature of the cause of action; the character of the reliefs sought and whether the claim of the Plaintiff arises from and out of the obligations of the parties as licensor and licensee or, landlord and tenant are important considerations. The garb or cloak which is wrapped around the pleadings by an astute draftsman must be kept aside to deduce the pith and substance of the pleadings. If the suit relates to the recovery of possession, it is a suit to which Section 41(1) applies notwithstanding the fact that some of the reliefs or a portion of the cause of action is structured around a claim for specific performance. The Court must ask itself : Does the theme and the foundation relate to the recovery of possession? And in answering that question, the pleadings must be considered as a whole without severing its constituents or reading parts in isolation."

53. We have also gone through the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Retirements) Regulations, 2015 issued by the Securities and Exchange Board of India wherein also we find that the provisions are dealing

with principles governing disclosures and obligations; right of shareholders; equitable treatment; role of stakeholders in corporate governance; disclosure and transparency; responsibilities of the Board of Directors; and other responsibilities.

54. The said regulations also deal with the parameters to be followed by the Board of Directors conducting the business of the company. However, none of the provisions therein also is dealing with the nomination to Directorship. But Regulation 19 deals with Nomination and Remuneration Committee and sub-regulation (1) specifies that the Board of Directors shall constitute the Nomination and Remuneration Committee as follows:-

> “a) The committee shall comprise of at least three Directors;
>
> b) All Directors of the Committee shall be non-executive Directors; and
>
> c) at least two-thirds of the Directors shall be independent Directors.”

55. Even though learned Senior Counsel for the writ petitioners Sri. P. Chidambaram contended that from the website of the appellant

Bank, it could be gathered that there are only two Directors in the Nomination and Remuneration Committee, learned Senior Counsel appearing for the appellant Bank Sri. Rafiq Dada submitted that no such contention is raised before the writ court and further that the present members of the Nomination and Remuneration Committee limited to two is on account of various factors and developments that have taken place subsequent to the rejection of nomination of the petitioners and the same would not have any bearing to the issue to be decided in the appeal.

56. We find force in the said contention.

57. Now the question remains to be considered is whether a writ in the matter of rejection of nomination can be issued against the appellant Bank. It may be true that the Dhanalakshmi Bank, though a private Bank, may be discharging certain duties with respect to receipt of deposits and issue of loans and other financial activities. But the said duty cast upon a private Bank like the appellant, even assuming it as a public duty, has nothing to do with the election to the Director Board of the banking company, whose activity is confined to the realm and control of the shareholders of the appellant company.

58. The deliberation made above would make it clear that none of the provisions of the Banking Regulation Act and the SEBI Act are dealing with the election to the post of Directors of the appellant banking company. Even assuming that the procedures contained under Section 160 and Section 178 of the Companies Act are violated, it is a subject matter within the realm of a private dispute by and between the rival parties.

59. In that view of the matter we deem fit and proper to discuss the preposition of law laid down by the Hon'ble Apex Court in some of the abovementioned judgments. It is laid down by the Hon'ble Apex Court in most of the judgments above that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs.

60. It is held in **Binny Ltd.** (supra) that a writ of mandamus under Article 226 is used for enforcement of various rights of the public or to compel public / statutory authorities to discharge their duties and act within their bounds. It was also held therein that the scope of mandamus is limited to enforcement of public duty and the scope is determined by the nature of the duty to be enforced, rather

than the identity of the authority against whom it is sought. It was further held therein that if the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced.

61. So also, in **Ramakrishna Mission** (supra), the Hon'ble Apex Court had occasion to consider the issue after conducting a threadbare survey of all the earlier judgments, and held that even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of the private contract of service. In Ramakrishna Mission (supra), the Hon'ble Apex Court has taken into account the proposition of law laid down in all the judgments referred to above wherein the judgment in **G. Bassi Reddy v. International Crops Research Institute** reported in **[(2003) 4 SCC 225]** was considered and held at paragraph 24 as follows:-

> "24. G. Bassi Reddy v International Crops Research Institute 4, a two judge Bench of this Court dealt with whether the International Crop Research Institute for the Semi-Arid Tropics ("ICRISAT") which is a non-profit research and training centre, is amenable to the writ jurisdiction under Article 226. The dispute concerned the termination of employees of ICRISAT. The Court held that only functions which are similar or closely related

to those that are performed by the State in its sovereign capacity qualify as 'public functions' or a 'public duty':

> "28. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty… ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities.""

62. So also, it was held therein that, it is difficult to draw a line between public function and private functions when they are being discharged by purely personal authority and that a body is performing a public function when it seeks to achieve some collective benefit for

the public or a section of the people and is accepted by the public for that section of the public as having authority to do so; and that bodies, therefore, exercise public functions when they intervene or participate in social or economic affairs in the public interest. It was also held therein that the duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but nevertheless there must be the public law element in such action; and there cannot be any general definition of public authority or public function and the facts of each case decide the point.

63. In **Federal Bank Ltd.** (supra) also, the Hon'ble Apex Court has held that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of a State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on state funding; (vii) a private body discharging public duty ought positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute to compel it to perform such a statutory function.

64. In our view, the judgments cited above are all rendered

sequentially upholding the principles of law laid down by the Hon'ble Apex Court in its various decisions. To put it otherwise, no doubt, Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights and Article 226 and Article 12 of the Constitution of India are not confined only to statutory authorities and instrumentalities of the State, since the said provision of the Constitution cover any authorities and instrumentalities of the State and any other person or body performing public duty.

65. Therefore, it can be seen that what is relevant is the nature of the duty imposed on the body as held by the Hon'ble Apex Court, which differs from case to case. In **Andi Mukta** (supra), it was held that the duty must be judged in the light of positive obligation owned by the person or authority to the affected party. It is also not necessary that a person or the authority on whom the statutory duty imposed is a public official or an official body, however the preposition laid down in the afore cited judgments would show that there should be a public element coupled with a public duty which should be the core and paramount consideration to take into account in order to identify as to

whether a writ petition can be maintained under law.

66. As we have pointed out above, the Dhanalakshmi Bank, being a banking company, may have to discharge various public duties in the realm of its banking operations like receiving deposits, issuing loans, taking steps for recovery and so on, but the said function discharged by the appellant banking company has nothing to do with its private affair to elect the Board of Directors, if at all assuming that such transactions have any public element and public duty.

67. In that context, the Hon'ble Apex Court in **Phoenix ARC Private Ltd. Vishwa Bharati Vidya Mandir and Others [(2022) 5 SCC 345]**, had to consider the performance of public functions by a private party vis-a-vis the necessity of, for invocation of writ jurisdiction and held as follows;

> "18. Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC – appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public

functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of Praga Tools Corporation [(1969) 1 SCC 585 and Ramesh Ahluwalia [(2012) 12 SCC 331] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

68. In **Life Insurance Corporation of India v. Escorts Ltd. And Others [(1986) 1 SCC 264],** the Hon'ble Apex Court held as follows:-

"102. For example, if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the

> court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the Company like any other shareholder."

69. Considering the issue, we are of the view that the appellant Bank is able to satisfy this Court that the rejection of the nomination for the post of Directorship has nothing to do with the public element or public duty of the appellant company or its Board of Directors or the Nomination and Remuneration Committee. Even though various other judgments are cited by the rival parties, we are of the view that

the legal position with respect to the maintainability of a writ petition is so well settled with the preposition laid down by the Hon'ble Apex Court in its various judgments and as discussed above.

70. Succinctly put, we have no hesitation to say that interference is required to the interim order of the learned Single Judge in view of the fact that the issue raised in the writ petition has no public element involved, and the issue of rejection of nomination has nothing to do with the public duty and public function if any discharged by the Bank with respect to the other commercial and financial banking activities of the Bank concerning the public. It is only appropriate to state at this juncture that the writ petitioners have got efficacious statutory remedy under the Companies Act, 2013 or before the civil courts to ventilate their grievances if the statutory requirements are violated by the appellant Bank.

71. The appeals are allowed; the impugned interim order is set aside, and consequently, we hold that W. P. (C) No. 19758 of 2021 leading to W. A. No. 425 of 2022 and W. P. (C) No. 20425 of 2021 leading to W. A. No. 432 of 2022 is not maintainable under Article 226 of the Constitution of India.

Therefore the above writ petitions are dismissed as being not maintainable under law. But we make it clear that the findings and observations made above shall not be construed as any expression of opinion on the merits of the matter. Needless to say, all the questions of fact and law are left open to be decided by an appropriate forum.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

Eb

///TRUE COPY///
P. A. TO JUDGE