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Besides that, the contractor would also be entitled to claim future interest on the pendente lite interest awarded to the contractor, under claim No. 1.

(12) For the reasons recorded above, in my opinion, the learned Executing Court was right in holding that the principal sum adjudged would include not only claims 2 to 20 and 21 but also claim No. 1. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed, but with no order as to costs.

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**S.C.K.**

*Before Jawahar Lal Gupta, V.K. Bali & V.M. Jain, JJ*

PUNJAB COOPERATIVE BANK LTD. & ANOTHER,—*Petitioners*

*versus*

UNION OF INDIA & OTHERS,—*Respondents*

C.W.P. No. 8437 of 1997

13th July, 2000

*Constitution of India, 1950—Arts. 226—Banking Regulation Act, 1949—S. 45—Bari Doab Bank Ltd. & The Punjab Cooperative Bank Ltd. challenging the order of imposition of moratorium—Delhi High Court dismissing the petition while granting an opportunity to the Banks to represent their case at the time of preparation of a scheme of amalgamation by the RBI—RBI inviting the suggestions/objections from the Banks on the scheme of amalgamation prepared u/s 45(4)—Delhi High Court dismissing the appeal of the Banks—Banks filing objections against the scheme of merger—Supreme Court directing the grant of post decisional hearing to the Banks—Banks failed to file any further objections after passing of the order by the Supreme Court—No oral/personal hearing or any other opportunity whatsoever sought by the Banks—Government sanctioning the scheme of merger after considering the objections already submitted by the Banks in the light of the comments made by the RBI—High Court rejecting the plea of the Bari Doab Bank regarding ‘post decisional hearing’—Supreme Court affirming the order of the High Court—“Post decisional hearing”—Meaning of —Whether the Government was bound to afford an opportunity of oral/personal hearing to the Banks and not calling upon the Banks to appear before it & make submissions amounts to violation of the principles of natural justice—Held, no—Post decisional hearing does not mean personal hearing—Right of oral hearing is not an essential ingredient of natural justice—Supreme Court order did*

*not indicate that any fresh notice or further opportunity be given to the Banks—No prejudice caused to the Banks—Decision rendered in Bari Doab Bank Ltd.'s case held to be correct.*

Held that on a perusal of the order passed by the Supreme Court, it appears that the petitioner had not sought a fresh opportunity to be invited to file any objections or to be given an oral hearing to urge any new grounds against the imposition of moratorium. In fact, the only apprehension expressed by the petitioners was that the objections against the moratorium may not be considered by the Central Government. No fresh opportunity beyond the consideration of objections was sought. In any case, it was not the claim of the petitioners that the Bank had to be given a notice or that it had to be given an opportunity of oral hearing. The petitioner-Bank had only prayed for the consideration of the objections filed by it on 20th March, 1997. It was not even suggested by the counsel that the objections had not been considered. That being so, it is clear that the directions given by their Lordships of the Supreme Court had been fully complied with. No cause for grievance subsists.

(Paras 20 & 22)

Further held, that right to oral hearing is not an essential ingredient of natural justice in every case. Basically, the question has to be decided on the facts of each case. The grant of a right to oral hearing in every case may enable the concerned party to unduly obstruct and delay the proceedings with the result that the process of law may defeat the very purpose of law.

(Para 23)

Further held, that the petitioners did not file any objections suggesting that the moratorium had been wrongly imposed after the decision of the case by their Lordships of the Supreme Court. The Bank did not make any request to seek any information. The petitioners sought no opportunity whatsoever. It is not the petitioner-Bank's case that it had not become aware of the grounds on which the moratorium had been imposed or that it wanted to say something beyond what had already been submitted. In fact, even before the Supreme Court, it was clearly stated by the petitioners that the objections to the moratorium had been filed on 20th March, 1997. That having been done, the Central Government was only required to consider those objections. That was done. Nothing more was required. Nothing more had to be done.

(Para 25)

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Further held, that the decision of the Division Bench in CWP No. 5808 of 1997 (*Bari Doab Bank v. Union of India*) decided on 12th November, 1997 is correct. There is no violation of the principles of natural justice in the instant case.

(Para 36)

R.K. Jain, Senior Advocate with S.C. Nagpal, Advocate *for the petitioner*

K.N. Bhatt, Additional Solicitor General with Anil Malhotra, Advocate *for respondent No. 1*

L.M. Suri, Senior Advocate with Deepak Suri, Advocate *for respondent Nos. 2, 3, and 4*

M.L. Sarin, Senior Advocate with S.K. Sharma, Advocate *for respondent No. 5*

### JUDGMENT

*Jawahar Lal Gupta, J.*

(1) On 30th September, 1996, the Ministry of Finance, Department of Economic Affairs (Banking Division) of the Government of India, imposed a moratorium restraining the Punjab Cooperative Bank Limited and the Bari Doab Bank Limited from transacting any business for a period of three months. By another order, the period of moratorium was extended for three months. On 7th April, 1997, the Government rejected the objections filed by the two Banks against the imposition of moratorium and the scheme of merger etc. By another notification of date, the Central Government sanctioned the scheme put up by the Reserve Bank of India for the amalgamation of the two Banks with the Oriental Bank of Commerce. The two orders passed by the Government of India have been produced as Annexures P. 2 and P.3 with this writ petition. The petitioners viz. the Punjab Cooperative Bank Limited and one of its Directors pray that these notifications be quashed.

(2) One of the aforesaid two Banks viz. the Bari Doab Bank Limited had challenged the orders of moratorium passed on 30th September, 1996 as also the two notifications dated 7th April, 1997 (Annexures P. 2 and P. 3 with this petition) through CWP No. 5808 of 1997. This writ petition was listed before a Division Bench of which I was a member. The writ petition was dismissed,—*vide* order dated 12th November, 1997. The Special Leave Petition filed by the Bari Doab Bank Limited was also dismissed. Despite that, the Punjab Cooperative Bank Limited

is still battling for survival. The petition filed by it is an effort in that direction.

(3) This petition was posted for hearing before a Bench consisting of Hon'ble Mr. Justice V.K. Bali and Hon'ble Mr. Justice B. Rai. The primary contention raised on behalf of the petitioners was that the impugned orders were vitiated as "no post-decisional hearing" was at all given". The contention was controverted on behalf of the respondents. It was *inter alia* pointed out that the objections filed by the petitioners to the order of moratorium and the scheme for merger had been duly considered before the issue of the impugned notifications of 7th April, 1997. It was also pointed out that a similar objection had already been rejected by the Division Bench in the petition filed by the Bari Doab Bank Limited. The Special Leave Petition against the decision of the Division Bench had been dismissed by the Supreme Court.

(4) The Bench noticed that one of the questions which was considered by the Bench in the case of Bari Doab Bank was :—

"Are the impugned orders vitiated on the ground that the petitioner was not granted an effective post-decisional hearing?"

(5) The Bench further noticed that the aforesaid question had been answered against the Bank "primarily on the ground that the petitioner had failed to avail of an opportunity which had been clearly granted". Their Lordships were doubtful about "the correctness of the decision rendered by the..... Bench in CWP No. 5808 of 1997....." on the question of post-decisional hearing. Thus, the matter has been placed before this Bench for the consideration of the issue of post-decisional hearing.

(6) The factual position in this case is not materially different from the case of the Bari Doab Bank Limited. The Petitioner Bank was established in the year 1905. While the Petitioner-Bank was conducting its business, the Reserve Bank of India had filed an application under Section 45(1) of the Banking Regulation Act, 1949 seeking an order of moratorium. The Government of India had accepted the request. *Vide* order dated 30th September, 1996 the Central Government had imposed a moratorium on the Petitioner-Bank upto 31st December, 1996. The Petitioner-Bank was restrained from granting loans or advances, incurring liability or making investments etc. The Petitioner-Bank as also the Bari Doab Bank Limited had approached the Delhi High Court through two separate writ petitions. Both, including CWP No. 4046 of 1996 filed by the Petitioner-Bank were dismissed by a

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learned Single Judge of the Delhi High Court, *vide* order dated 5th March, 1997.

(7) The Reserve Bank of India proposed a scheme for the amalgamation of the petitioner-Bank as also the Bari Doab Bank Limited with the Oriental Bank of Commerce Limited. A copy of that scheme was served on the Petitioner-Bank on 5th March, 1997. The Bank was called upon to file its objections. The Petitioner-Bank filed a Letters Patent Appeal which was dismissed by a detailed order on 20th March, 1997 by a Division Bench consisting of Hon'able The Chief Justice Mr. M. Jagannadha Rao (as his Lordship then was) and Hon'ble Mr. Justice Manmohan Sarin. It appears that simultaneously, the Petitioner-Bank had filed objections dated 18th March, 1997 against the proposed scheme which had been served on it on 5th March, 1997. The Petitioner-Bank also approached the Supreme Court through SLP (C) No. 6904 of 1997. A Bench consisting of Hon'able Mr. Justice S.C. Agarwal and Hon'able Mr. Justice G.T. Nanavati had disposed of the SLP *vide* order dated 31st March, 1997. Their Lordships had found "no infirmity" in the view taken by the High Court that "the petitioner will have post-decisional opportunity at the stage of filing objections to the Draft scheme framed under Section 45(4) when forwarded by the RBI under Section 45 (6) of the Act". In view of the statement made on behalf of the RBI that "the objections submitted by the petitioner against the order of moratorium dated 30th September, 1996 as well as the draft scheme framed by the RBI under section 45(4) have to be considered by the Central Government under Section 45(7) of the Act in the light of the comments that are made by the RBI on the said objections", their Lordships were also pleased to observe that the apprehension of the petitioner that the "said objections will not be considered by the Central Government is unfounded....." and that "no fault can be found in the matter of post-decisional hearing in respect of the order of moratorium passed under section 45(2) of the Act. "Their Lordships were pleased to make certain other observations and extend the moratorium "till 7th April, 1997". It was thereafter that the Central Government had passed the two orders dated 7th April, 1997, copies of which have been produced as Annexures P.2 and P.3 with this writ petition. The petitioners pray that these notifications "at Annexure P.2 and Annexure P-3" be quashed.

(8) Detailed written statements have been filed on behalf of the respondents. It is not necessary to notice the pleadings in detail. Suffice it to say that the Petitioner-Bank's challenge to the validity of the orders had been controverted.

(9) Counsel for the parties have been heard.

(10) Mr. R.K. Jain contended that the view taken by the Division Bench in the case of Bari Doab Bank Limited can be challenged despite the dismissal of the Special Leave Petition. He further submitted that even though the Statute does not in terms require the grant of oral hearing, still keeping in view the fact that important rights were involved and that the court had directed the grant of post-decisional hearing, the Central Government was bound to afford an opportunity of oral hearing to the petitioner-Bank. The failure to do so vitiates the impugned orders. Counsel further contended that the Central Government had acted in violation of the principles of natural justice in not calling upon the petitioner-Bank to appear and make its submissions.

(11) Mr. K.N. Bhatt, appearing for the respondents controverted the claim made on behalf of the petitioners. He contended that the petitioner-Bank has not made any prayer for the quashing of the order dated 30th September, 1996 by which moratorium had been imposed. The Statute does not envisage oral hearing. Despite that, the petitioner-Bank was allowed the opportunity of post-decisional hearing with regard to the imposition of the moratorium. It had chosen to say nothing in addition to the objections which had been filed on 20th March, 1997. These objections having been considered, the Petitioner-Bank has no cause to complain of the violation of the principles of natural justice. No prejudice had been caused. No ground for interference is made out.

(12) The short question that arises for consideration is—Have the respondents acted in violation of the principles of natural justice ?

(13) While considering this question, the fact that the Banking Companies Act, 1949 was passed predominantly to safe-guard the interests of the depositors and the State, has to be kept in view. Even though the name of the Act was later changed to the Banking Regulation Act, 1949, the basic legislative intent has remained unaltered. In this situation, the principles of natural justice and the provisions of the statute have to be harmonised.

(14) The principles of natural justice belong more “to the common consciousness of mankind than to juridical science.” These are “general principles of law common to civilised communities.” Simply put, the rules of natural justice are not more than the principles of fair-play. These are meant to promote justice. To ensure fairness of procedure. However, these cannot be subjected to “legal strait-jackets”. The requirements vary with the circumstances of each case. It is basically recognised that a party should not “suffer in person or in purse without an opportunity.....” However, in a situation requiring promptitude,

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the application of the principles of natural justice can be limited. Equally, the possibility of obstructive conduct can furnish an adequate justification for the exclusion of the rule of hearing. As was observed by Lord Denning in *R. vs. Secretary of the State for Home Department* (1), "the rules of natural justice must not be stretched too far. only too often people who have done wrong seek to invoke 'the rules of natural justice' so as to avoid the consequences".

(15) The principles of natural justice have repeatedly fallen for consideration of their Lordsips of the Supreme Court. It has been repeatedly held that the applicability depends upon the context and the facts of each case. The objective is to ensure a fair deal. In *State Bank of Patiala and others vs. S. K. Sharma*, (2), it was observed as under :—

"29. The matter can be looked at from the angle of justice or of natural justice also. The object of the principles of natural justice—which are now understood as synonymous with the obligation to provide a fair hearing—is to ensure that justice is done, that there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing....."

(16) Again in *Union of India & anr. vs. Jesus Sales Corporation*(3), it was observed as under :—

"However, under different situations and conditions the requirement of compliance of the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearing have to be aforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions, when principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a *personal hearing*." (emphasis supplied)

(17) It is in the above background that the issue as noticed above has to be considered.

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- (1) Exp. Mughal (1974) Queen's Bench 313, 325
  - (2) 1996(3) SCC 364
  - (3) 1996(4) SCC 69

(18) On behalf of the petitioners, it was contended that the respondents were bound to afford an opportunity of oral hearing to them. Is it so ?

(19) The sequence of events has been noticed above. *Vide order* dated 30th September, 1996, the Central Government had imposed a moratorium under section 45(2). This was to be effective upto 31st December, 1996. A copy of this order has been placed on record as Annexure P.1. On 26th December, 1995, the period of this moratorium, was extended for another three months. This order has not been placed on the paper-book of the case. The petitioner-Bank had filed CWP No. 4046 of 1996 to challenge this order. This writ petition was dismissed by the learned Single Judge *vide order* dated 5th March, 1997. The petitioner-Bank had filed LPA which was dismissed on 20th March, 1997. The Petitioner-Bank had then filed the SLP. Their Lordships were pleased to notice the fact that "the learned Judges.... of the Delhi High Court have held that having regard to the purpose of a moratorium, the petitioners could not claim a right to be heard at a stage prior to the passing of an order under section 45(2) but have held that the petitioners will have post-decisional opportunity at the stage of filing objections to the draft scheme framed under section 45(4) when forwarded by the RBI under section 45(6) of the Act". Their Lordships had not found "any infirmity in the..... view of the High Court". Thus, the petitioners were entitled to a post-decisional opportunity "at the stage of filing objections to the draft scheme...." It may also be noticed that counsel for the petitioners had stated that "objections to the draft scheme as well as the order dated 30th September, 1996 for moratorium have been submitted on 20th March, 1997". It was submitted that "since the order of moratorium under section 45(2) of the Act was passed by the Central Government, the post-decisional hearing against the said order should be by the Central Government and that the consideration of the objections of the petitioner by the RBI would not satisfy the object of a post-decisional hearing in respect of the order of moratorium passed by the Central Government". on behalf of the respondents, it was stated by the Attorney General and the Solicitor General that "the objections submitted by the petitioners against the order of moratorium dated 30th September, 1996 as well as the draft scheme framed by the RBI under section 45(4) have to be considered by the Central Government under section 45(7) of the Act in the light of the comments that are made by the RBI.... on the said objections and that the apprehension of the petitioners that the said objections will not be considered by the Central Government is unfounded." In view of this submission, their Lordships were pleased to observe that "no fault can



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be found in the matter of post-decisional hearing in respect of the order of moratorium passed under section 45(2) of the Act.”.

(20) On a perusal of the order passed by their Lordships, it appears that the petitioners had not sought a fresh opportunity to be invited to file any objections or to be given an oral hearing to urge any new grounds against the imposition of moratorium. In fact, the only apprehension expressed by the petitioners was that the objections against the moratorium may not be considered by the Central Government. No fresh opportunity beyond the consideration of objections was sought. In any case, it was not the claim of the Petitioners that the Bank had to be given a notice or that it had to be given an opportunity of oral hearing. Thus, the contention sought to be raised on behalf of the petitioners that the post-decisional hearing meant a fresh notice and opportunity cannot be sustained.

(21) On behalf of the respondents, it was vehemently contended by Mr. Bhatt that the petitioners have not challenged the order of moratorium. No prayer for quashing the order dated 30th September, 1996 by which the moratorium had been initially imposed has been made despite the fact that a copy of this notice has been produced as Annexure P.1. It is undoubtedly so. Still further, it is the admitted position that the moratorium was extended for a period of three months *vide* order dated 26th December, 1996. Even a copy of this order has not even been produced. No prayer for its quashing has been made. In this situation, the petitioners' grievance that the order of moratorium is vitiated as the post-decisional hearing has not been given, cannot be sustained.

(22) In view of the above, it is clear that the Petitioner-Bank had only prayed for the consideration of the objections filed by it on 20th March, 1997. It was not even suggested by Mr. Jain that the objections had not been considered. That being so, it is clear that the directions given by their Lordships of the Supreme Court had been fully complied with. No cause for grievance subsists.

(23) Irrespective of this, we are also of the view that right to oral hearing is not an essential ingredient of natural justice in every case. Basically, the question has to be decided on the facts of each case. There are two factors which need to be noticed in the present case. Firstly under the Statute, the order of moratorium can remain in operation only for a limited period. The process as contemplated under Section 45 has to be completed within the period of six months. The grant of a right to oral hearing in every case may enable the concerned

party to unduly obstruct and delay the proceedings with the result that the process of law may defeat the very purpose of law.

(24) Secondly, it is clear on the record that the order of moratorium was to expire on 31st March, 1997. The respondents had to decide the case by that date. While disposing of the SLP, their Lordships of the Supreme Court had extended the operation of the order of moratorium till 7th April, 1997. It was also observed that in case an order had already been passed, the Central Government shall be at liberty to pass a supplemental order. The obvious implication was that the objections filed by the petitioners against the scheme proposed by the RBI as also to the moratorium should be duly considered by the Central Government. It was not even remotely indicated in the order that any notice or further opportunity had to be given to the Bank. Thus, the contention as now sought to be raised is clearly an after-thought.

(25) Even if this aspect of the matter is ignored, it is the admitted position that the petitioners did not file any objections suggesting that the moratorium had been wrongly imposed after the decision of the case by their Lordships of the Supreme Court. The Bank did not make any request to seek any information. The petitioners sought no opportunity whatsoever. It is not the petitioner-Bank's case that it had not become aware of the grounds on which the moratorium had been imposed or that it wanted to say something beyond what had already been submitted. In fact, even before the Supreme Court, it was clearly stated by the petitioners that the objections to the moratorium had been filed on 20th March, 1997. That having been done, the Central Government was only required to consider those objections. That was done. Nothing more was required. Nothing more had to be done.

(26) There is another aspect of the matter. Despite being asked, counsel for the petitioners was unable to show that the Bank had really anything to submit and that if an opportunity is now granted, it would result in some change in the decision. Learned counsel could not even give an indication of what the petitioners may be able to say if an opportunity were to be granted. In this situation, we are satisfied that no prejudice has been caused.

(27) It may also be noticed that the petitioner—Bank and the Bari Doab Bank are placed in an identical situation. The orders passed in case of both the Banks are one. They had fought together. The decision in one of the two cases has already been affirmed by their Lordships of the Supreme Court by dismissing the SLP would it be fair to reopen the whole case at this stage despite the fact that it may lead to contradictory decisions? In the circumstances of the case, I feel satisfied that it would not be proper to do so.

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(28) In view of the above, there appears to be no infirmity in the order passed by the Division Bench in CWP No. 5808 of 1997. It is held that the action in the present case is not violative of the principles of natural justice. The petitioners were afforded a due and reasonable opportunity.

(29) The case shall now be placed before the Division Bench for further proceedings.

*V.K. Bali, J.*

(30) I have gone through the judgment recorded by my learned brother, Jawahar Lal Gupta, J and fully concur with the view expressed by His Lordship regarding personal/oral post-decisional hearing, yet I would like to append a small note.

(31) *Vide* orders dated 29th January, 1999, sitting with B. Rai, J. (as His Lordship then was), view was expressed that the decision recorded by Division Bench of this Court in CWP No. 5808 of 1997 decided on 12th November, 1997 needs reconsideration. A request was, thus, made to Hon'ble the Chief Justice to constitute a larger bench wherein it may be possible to reconsider the correctness of decision rendered in CWP No. 5808 of 1997. This is how the matter has come up before a Full Bench of this Court.

(32) There is no need to reiterate the facts as the same have been given in sufficient details in the judgment prepared by Jawahar Lal, Gupta, J, as also reference order dated 29th January, 1999 for the purpose of deciding the question referred to the Full Bench. Suffice it, however, to say that it is the reasons recorded in judgment rendered in CWP No. 5808 of 1997, over-ruling the objection of the petitioner with regard to post-decisional hearing that could be and indeed are subject matter of debate before the Full Bench. In the reference order dated 29th January, 1999, such reasons have been extracted in their entirety. The substance of the reasons, that resulted into answering the question against the petitioner were that petitioner had failed to avail of an opportunity which had duly been granted as no objections were filed after passing of order dated 31st March, 1997 by the Supreme Court. I am of the considered view that, on the strength of reasons given in the judgment in CWP No. 5808 of 1997 alone, contention of learned counsel for the petitioner with regard to personal/oral post-decisional hearing could not be negated. While so observing, I would immediately hasten to add that, on the strength of the reasons that have been given now and which are in addition to the ones given in judgment recorded in CWP No. 5808 of 1997, no occasion arises to reconsider the correctness of decision rendered in writ petition aforesaid.

(33) What I would like to further add in this note is that while making a reference to the larger bench, we were conscious of the fact that a similar writ petition, i.e. CWP No. 5808 of 1997 had since been dismissed and so was the fate of Special Leave Petition preferred against the said judgment and yet, while making a mention of these facts, we had thought it proper to make a reference to the larger Bench. It may be relevant to mention here that against reference order dated 29th January, 1999, Special Leave Petition bearing No. 8746 of 1999 was filed in the Hon'ble Supreme Court wherein following order was passed on 23rd July, 1999 :—

“This Special Leave Petition is completely misconceived. The same is dismissed.”

(34) Obviously, while filing the SLP, it ought to have been pleaded and so argued that in the case of Beri Doab Bank Ltd., the view expressed by the Division Bench in CWP No. 5808 of 1997 was affirmed in SLP, even though the same was dismissed in limine without passing a speaking order. That bring the situation, despite the fact that the view expressed by Division Bench in CWP No. 5808 of 1997 and in particular, dealing with post-decisional hearing, had assumed finality in Bari Doab Bank's Case, petitioner in the present case could have yet pleaded to take a different view. The effect of dismissal of SLP in limine, has since already been discussed in reference order dated 29th January, 1999 and, thus needs no reiteration.

V.M. Jain, J.

(35) I have gone through the judgments rendered by learned brothers Jawahar Lal Gupta, J and V.K. Bali, J. I fully agree with the view expressed by brother Jawahar Lal Gupta, J.

#### *ORDER OF THE COURT*

(36) In view of the above, we find that the decision of the Division Bench in CWP No. 5808 of 1997 (Bari Doab Bank vs. Union of India) decided on 12th November, 1997 is correct. It is also held that there is no violation of the principles of natural justice in the instant case.

(37) The case shall now be placed before the Division Bench for decision.

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**R.N.R.**