

C.V. Raman Vs. the Management of Bank of India, Regional Office, Southern Region, Represented by the Asst. General Manager and anr.

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SooperKanoon Citation : sooperkanoon.com/807787

Court : Chennai

Decided On : Apr-18-1984

Reported in : (1985)2MLJ439

Appellant : C.V. Raman

Respondent : The Management of Bank of India, Regional Office, Southern Region, Represented by the Asst. General

Advocate for Pet/Ap. : Mr. N.G.R. Prasad

Judgement :

ORDER

Mohan, J.

1. An important question arising in this batch of cases is, whether the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as the Shops Act) is applicable to the Nationalised Banks and to the State Bank of Indian.

2. We would first note the facts; relating to W.A. Nos. 561 and 562 of 1983. They arise out of W.P. Nos. 2013 and 2014 of 1979. W.P. No. 2013 of 1979 is for mandamus to direct the first respondent to dispose of the preliminary objection raised by the Management of Bank of India, Regional Office, Southern Region,

represented by the Assistant General Manager, Madras, in regard to the maintainability of T.S.E. Case No. 49 of 1975 on the file of the Additional Commissioner for Workmen's Compensation, II, Madras, in the appeal preferred by the employee, C.V. Raman under Section 41 of the Act. W.P. No. 2014 of 1979 is for prohibition to prohibit the Additional Commissioner from proceeding to take up for disposal T.S.E. Case No. 49 of 1975.

3. The employee, C.V. Raman, the appellant in W.A. Nos. 561 and 562 of 1983, was working in the Bank of India. His services came to be terminated by the said Bank by an order, dated 17th April, 1975. For the purpose of the issue involved in these appeals, it is not necessary to go into the circumstances leading to the dismissal. However, it is sufficient to state that the said dismissal was by way of disciplinary action for certain charges against him. The dismissal order was preceded by a domestic enquiry.

4. Aggrieved by the dismissal, he preferred an appeal under Section 41 (2) of the Shops Act. That appeal was taken up on file and numbered as T.S.E. No. 49 of 1975 on the file of Additional Commissioner for Workmen's Compensation, II, Madras. On receipt of the appeal memo, the Management of Bank of India in its written statement raised a preliminary objection that the appeal itself was not maintainable, since the provisions of the Shops Act were inapplicable: to the Bank, which is an establishment under the Central Government. Therefore, by reason of Section 4 (1) (c) of the Shops Act, it was exempt from the purview of the said Act. It was contended that since the matter went to the root of jurisdiction, it could be taken as a preliminary issue and decided before the merits of the appeal were gone into. By an order dated 7th April, 1979, the Additional Commissioner for Workmen's Compensation, refused to pass an order on the preliminary objection. He directed that the appeal would be heard both on the preliminary objection and on merits. Accordingly, he posted the appeal on 19th May, 1979. It was at that stage, the above two writ petitions were filed.

5. In the affidavit filed in support of the writ petitions, the only point that was raised, was that in view of Section 4 (1) (c) of the Shops Act, the Bank would fall outside the purview of the Act. Section 2 (3) of the Act defines 'commercial establishment'

as including a Bank. Section 2 (6) defines 'establishment' among other things 'commercial establishment'. As the Bank is an establishment under the Central Government by virtue of Section 4 (1) (c) of the Shops Act, it would fall completely outside the Act. No employee of the Bank can have recourse to the appellate authority constituted under Section 51 of the Act. It was submitted that this contention was fully supported by the provisions of the Banking Companies (Acquisition of Undertakings) Act, 1970 in and by which several Banks were nationalised including the Bank of India, the first respondent in the above appeals. The employee contended that the Bank of India was not an establishment under the Government of India and therefore, the appellate authority constituted under Section 41 of the Shops Act will have every jurisdiction to try the appeal. The matter came up before our learned brother, Ramanujam, J. The learned Judge, on an analysis of the provisions of the Shops Act and on going through the important provisions of Banking Companies (Acquisition of Undertakings) Act, 1970 hereinafter referred to as the Nationalisation Act, came to the conclusion that the Bank of India was an establishment under the Government of India, and therefore Section 4 (1)(c) of the Shops Act would apply, which means the Bank will fall out of the purview, of the Shops Act. The learned Judge was of the view that whatever considerations applied in determining whether the Bank is an 'authority' within the meaning of Article 12 of the Constitution of India, those considerations ought to apply in deciding whether an establishment is one under the Government of India or not. He relied principally on *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* : (1975)ILLJ399SC The learned Judge was of the view that the ruling of this Court reported in *Madras State Electricity Board v. Commissioner of Labour* : (1960)IILLJ357Mad and *Madras State Electricity Board v. Commissioner of Labour* : (1961)IILLJ297Cal and *Narayanaswami v. Krishnamurthi.* : AIR1958 Mad343 cannot be said to lay down the correct law after the decision of the Supreme Court in *Sukhdev Singh's case* : (1975)ILLJ399SC On an analysis of the decision of the Supreme Court, the learned Judge held that two propositions would clearly emerge:

(1) A statutory corporation, such as the Bank, whose peculiar features can be gathered from the Nationalisation Act, can be taken to be owned by the Central Government or at any rate it would be an 'agency' or 'instrumentality' of the Central

Government.

(2) Even if the statutory Corporation belongs to the Central Government or it is owned by the Central Government, or it is an agency or instrumentality of the Central Government, still having regard to its separate legal status, having a legal personality of its own with power to acquire, hold and dispose of properties, the theory of separate legal enquiry with power to acquire, hold and dispose of the property of a statutory corporation is relevant only for the purpose of determining whether the assets and liabilities of the Corporation can be taken to be the assets and liabilities of the Government.

Thus, the learned Judge allowed the writ petition.

6. The petitioner in W.P. No. 1550 of 1981 is the State Bank of India, Madras. It is aggrieved by the order of the Commissioner of Labour, Madras, dated 14th February, 1981. The respondents in W.P. No. 1550 of 1981, filed an application under Section 51 of Shops Act. In that application, the Commissioner of Labour was requested to render a decision that all the provisions of Tamil Nadu Shops and Establishments Act of 1947 would apply to them as persons employed in the State Bank of India. It was also urged that the exemption granted by the Government of Tamil Nadu to persons holding position of Management in G.O. Ms. No. 512, Labour, dated 10th April, 1970 would not apply to them. Each one of the respondents filed separate applications praying for the same relief. Therefore, they came to be dealt with together.

7. A preliminary objection was raised on behalf of the writ petitioner that the State Bank of India would fall under the exemption clause contained under Section 4 (1) (c) of the Shops Act and therefore, the Act would not apply to the State Bank of India. Another objection was raised that the work of the respondents herein involved travelling and therefore, Chapter III of the said Act, which deals with hours of work, holdings and payment of overtime wages would not apply to them. On the second of the objections, the Commissioner held that the respondents herein were not persons, whose rank involved travelling, as the travelling, from one place to another occasionally and under the specific orders of the employer to do work outside the branch, would not convert an office job into one that involves

travelling. On the first of the objections, namely, the applicability of Section 4 (1) (c) of the Shops Act to State Bank of India, after analysis of the relevant provisions of the Act, and on a reference to relevant case law, he rejected the contention that the State Bank would fall under Section 4 (1) (c) of the Shops Act. In the result, he held that all the provisions of the Tamil Nadu Shops and Establishments Act, 1947 would apply to the respondents herein, who belonged to the Junior Management cadre of the State Bank of India and they are not occupying the posts of Branch Manager or field officers. It is under these circumstances, that the writ petition has come to be preferred for certiorari to quash the order of the Labour Commissioner, Madras.

8. W.P. No. 11029 of 1981: The State Bank of India is the petitioner herein. This writ petition is against the order of the Deputy Commissioner of Labour II, Madras. The respondent started his career as a clerk in the Imperial Bank of India way back in 1955. By dint of his hard work, he rose to the position of an Officer Grade II in 1965. When he was Branch Manager at Tirupattur (Ramanathapuram District) it was brought to the notice of the writ petitioner Bank that during his tenure as Field Officer in Sattur branch and also as Branch Manager at Tirupattur branch, he committed various acts of misconduct, which are prejudicial to the interests of the Bank.

9. By a charge sheet dated 24th November, 1978, sixteen charges were levelled. He submitted his explanation. His explanation was found not satisfactory. Hence the Bank decided to hold an enquiry into the charges against the second respondent. The Enquiry Officer gave his findings, dated 9th April, 1979 holding that the charges were proved. The Disciplinary Authority considered the findings of the Enquiry Officer and imposed the penalty of removal from service. He passed the orders on 10th September, 1979 removing him from service.

10. Against the said order of removal, he preferred an appeal on 12th October, 1979 to the Members of the Local Board of the Bank. At its meeting held on 22nd November, 1979, the Local Board of the Bank considered the appeal. It resolved that there was no justification to interfere with the findings recorded and the punishment imposed by the Disciplinary Authority. Accordingly the appeal was

dismissed. Thereupon, he preferred an appeal under Section 41 (2) of the Tamil Nadu Shops and Establishments Act. That was numbered as T.S.E. Case No. 60 of 1979. It was urged that in view of the exemption clause contained under Section 4 (1) (c) of the Act, the provisions of the Shops Act would be inapplicable and therefore, the appeal was incompetent. The appeal of the second respondent was allowed by the order, 14th July 1981. Hence, the present writ petition.

11. W.P. No. 9563 of 1983: Here again, it is State Bank of India that is the petitioner. The facts are as under: The second respondent was working as Assistant Security Officer, in the petitioner bank. During June, 1971 and October, 1971, he was stated to have committed certain serious irregularities, in the matter of claiming expenses, alleged to have been incurred on account of the visit of V.I.Ps. Therefore by a chargesheet dated 4th December, 1972, 15 charges were levelled against him. The second respondent was governed by the State Bank of India (Officers and Accountants) Service, Rules. Though under the Service Rules applicable to him, an enquiry was not contemplated having regard to the facts, the Bank decided to hold a full-fledged enquiry. Accordingly a domestic enquiry was held. The Enquiry Officer gave his findings, holding that all the charges, except a portion of one charge, were proved. After the receipt of the finding, the second respondent was asked to appear before the Chief General Manager for a personal hearing. After this, by letter dated 12th May, 1976, the second respondent was informed that it was proposed to inflict the punishment of dismissal. He was called upon to show cause why the said punishment should not be inflicted. He made a representation on 15th June, 1976. After considering his representation, the Local Board of the writ petitioner Bank at its meeting held on 7th July, 1976, dismissed him from Bank service. Aggrieved by that order, he preferred an appeal under Section 41 (2) of the Shops Act. The said appeal was numbered as T.S.E. No. 4 of 1979. Though, originally the matter was heard by Deputy Commissioner, Labour II, he did not pass any orders. Subsequently the first respondent v/as notified as the Appellate Authority and the appeal of the second respondent came to be transferred to the first respondent. In the course of hearing before him, it was urged that the petitioner bank is an establishment Under the Central Government. Therefore, by virtue of Section 4 (1) (c) of the Tamil Nadu Shops and Establishments Act, the said Act would not apply to the second respondent. The

further objection raised was that the second respondent was holding a position of Management and governed by service rules and therefore he could not invoke the provisions of the said Act. On a consideration of the matter, the first respondent overruled both the objections and set aside the order of the petitioner bank by its order dated 11th August, 1983. It is to quash the same that this writ petition has come to be preferred.

12. W.A. No. 1730 of 1984: In this case, the Central Bank of India, Madras is the petitioner. The writ petition is filed to quash the order passed in T.S.E. No. 23 of 1983, setting aside the order of dismissal passed by the writ petitioner against the second respondent by way of punitive action. Here again the jurisdictional issue and the applicability of Section 4 (1) (c) of the Shops Act to the writ petitioner bank is involved. Whatever decision is rendered in W.A. Nos. 561 and 562 of 1983 will squarely govern this case since this is one of the Nationalised Banks unlike the State Bank of India. Therefore, it is not necessary to go into the details relating to the facts.

13. Mr. N.G.R. Prasad, learned Counsel appearing for the appellant in W.A. Nos. 561 and 565 of 1983, C.V. Raman an employee of Bank of India, submits as under: After referring to Section 4 (1) (c) to the Shops Act, it is urged that the meaning of commercial establishment came to be decided in *Madras State Electricity Board v. Commissioner of Labour* (1961) 1 L.L.J. 297 : (1961) 1 M.L.J. 247. In that case, the question arose whether the electricity department of the then Madras Electricity Board would fall under the definition of 'establishment under the Government'. The Court found that there was no direct relationship of master and servant between employees of those departments and the Electricity Board. To the same effect is the ruling reported in *Madras State Electricity Board v. Commissioner of Labour* (1961) 1 L.L.J. 297 : (1961) 1 M.L.J. 247. In the *Canara Bank v. The Appellate Authority* : (1981) 11 L.L.J. 189 Ker, the Kerala High Court considered the question whether the Canara Bank and Bank of India--two nationalised Banks, were establishments under the Central Government and as such would be exempt from the provisions of the Kerala Shops and Establishments Act, 1960. Under Section 3 (1) (c) in that case, it was held, the control of the Government over the National Banks is limited only to matters of

policy. The Corporation, as a separate legal entity, is entitled to acquire, hold and dispose of property. It is liable to income-tax. The expression 'establishment' used in Section 3 cannot be equated with the undertaking. These Banks have their own staff pattern, their own conditions of service not connected with the Government or the services rules of the Government and are not establishments under the Central Government. The learned Counsel places strong reliance on this ruling and contends that the failure on the part of the learned single Judge to apply this ruling to the facts of this case has resulted in a wrong decision.

14. The next case relied on by the appellant is Corporation of City of Nagpur v. G.S. Narayanan Ayyar and another (1977) II L.L.J. 189. That case arose under Bombay Shops and Establishments Act. It was held that the Bank of Baroda, which was a Nationalised Bank was not exempt from the provisions of the Shops and Establishments Act as being an establishment of the Central Government. That learned Counsel next cites the ruling in C.R.P. No. 2632 of 1979. The decision in that case was rendered by one of us. It was held that the property belonging to a nationalised bank cannot be equated to the holdings of the Government of India.

15. As to what is the meaning of 'Government Company' can be gathered from the ruling of the Supreme Court in Western Coalfields Ltd. v. Special Area Development Authority : [1982]2SCR1 . In the light of that case, certainly the Nationalised Bank is not a Government Company.

16. In a case which arose before the Karnataka High Court which is reported in Workmen, Karnataka P. F. Employees Union v. Addl. Industrial Tribunal and another : (1983)IILLJ108Kant , it was held that the activity of the Provident Fund Organisation is essentially non-Governmental. If that were the position with regard to an organisation, the case of the Nationalised Bank could be no better.

17. In Ramana Dayaram Shetti v. International Airport Authority of India and others : (1979)IILLJ217SC the Supreme Court explained the meaning of 'agency' or 'instrumentality' for the purpose of Article 12 of the Constitution of India. Therefore, if those cases are applied, certainly the nationalised Banks cannot be held to be

either 'agency' or 'instrumentality'.

18. In *Biharilal v. Roshanlal Dobray* : [1984]1SCR877 the Supreme Court held that the U.P. Education Committee was held to be an alter-ego, having regard to the control exercised by the Central Government. But here the position is entirely different. By a reading of Article 12 of the Constitution of India, it is clear that it makes reference to other authorities. It has no reference to institutions like the present bank.

19. The learned Counsel for the appellant draws our attention to Sections 3 (4) and 4 of the Nationalisation Act. Both read together, according to him, would clearly establish the indisputable fact that the Nationalised Bank is an institution, having a separate entity. He also draws our attention to Sections 7 and 11 of this Act and he contends that the fact that the Banking company is assessable to income-tax under Section 11, is a point in favour of the employee to hold that the exemption provisions of the Shops Act, would not apply. The learned Judge, according to the learned Counsel for the appellant, erred in applying these cases to decide the meaning of an 'authority' under Article 12 of the Constitution of India to an 'establishment under the Government of India'. Certainly, it cannot be contended that any Nationalised Bank is an authority subordinate to the Government of India. Otherwise, its power as a legal institution and as a legal person to acquire, hold and to dispose of property is rendered nugatory.

20. Mr. M.R. Narayanaswami, learned Counsel appearing for the Bank contends that the approach to this important legal question must be in the following manner. Section 2 (3) of the Shops Act defines 'commercial establishment'. In that is included 'a bank'. Section 2 (5) defines 'establishment' as such. This Act is of the year 1947. Before that there was only the Reserve Bank of India. That was later on taken over by the Government. It was only by the Reserve Bank Transfer to Public Ownership Act (Central Act 62 of 1948), which came into force on 1st January, 1949, the Government of India started exercising control over other banks. It is under this background that the exemption clause contained under Section 4 has to be examined. Section 4 (1), Clauses (1) and (b) exempt individuals, while Section 4 (1) (c) exempts the establishments under the

Government. In other words, the establishment as such is exempt, which is found to be under the Government of India. Once the institution, as a whole is exempt, it is irrelevant to find out whether there exists a relationship of master and servant between the Government of India and the Employees of the Bank. Therefore, the crucial test to be applied is whether the Nationalised Bank is 'an establishment' under the Government of India. To establish this proposition, he would mainly rely on the provisions of the Nationalisation Act. The learned Counsel for the Banks invites our attention to Section 2 (d), which defines the corresponding provisions. Under Section 3, the meaning of 'vesting' is dealt with. No doubt, Section 3 (4) of the Act states a 'Nationalised Bank' 'the body corporate'. That cannot belittle a Nationalised Bank being under the Central Government. The vesting takes place under Section 4. Under Section 7, the location of the Head Office and the management must be as per the directions of the Central Government. Under Section 8, the Banks are to be guided by the Central Government. Under Section 10 (7), the profits of the banks are to be kept by the Central Government. Under Section 10 (7), the profits of the banks are to be transferred to Central Government. Section 14 lays down that a custodian of a bank is a public servant within the meaning of the Indian Penal Code. Then again, there is a scheme framed under Section 9 of this Act. That also lays down the measure of control by the Central Government over those banks. In *Sukhdev Singh v. Bhagathan* : (1975)ILLJ399SC , the Supreme Court formulated the test for holding the Life Insurance Corporation of India, the Oil and Natural Gas Commission as authority. The learned Counsel would draw out attention to the judgment of Justice Mathew in paragraph 109 and the judgment of Chief Justice Ray in paragraphs 39, 44 and 50. In paragraph 50 of the judgment, according to him, the Life Insurance Corporation of India was held to be an authority within Article 12 of the Constitution of India. A close analysis of the Life Insurance Act of 1956 and the Nationalisation Act of 1970, leaves no room for doubt that the Nationalised Bank is an establishment under the Government of India. It is important to note, according to the learned Counsel, paragraph 67 of the said judgment where it has been laid down that the employees of these Corporations or Commissions were not the employees of the Union or the State. They could not be elevated to that status and therefore, Article 311 was held inapplicable to them. Those tests, to hold the

institutions like the Life Insurance Corporation of India as an authority under Article 12 of the Constitution of India, should equally apply to Nationalised Banks, in view of the great similarity between Life Insurance Corporation of India Act and the Nationalisation Act. The learned single Judge was right in approaching the issue involved in this case in that way.

21. The same line of reasoning was adopted by the Supreme Court in *Som Prakash v. Union of India* Likewise in *Ajay Hosia v. Khalid Mujib* : (1981)ILLJ103SC , it was held that even a Society registered under the Societies Registration Act was an authority under Article 12 of the Constitution of India. At page 493, the test to be adopted was stated as follows:

The true owner is the State, the real operator is the State and the effective controller is the State and accountability for its actions to the community and the Parliament is of the State.

Those decisions are not only sound, but are relevant to the case on hand.

22. In *Warehousing Corpn. v. Tyagi* : (1970)ILLJ32SC , the Agricultural Produce (Development and Warehousing) Corporation, when it dismissed an employee without following the procedure laid down in its Regulation 16 (3), it was held that no declaration to enforce a contract of personal service will normally be granted. The remedy of such a person would be to file a suit for damages. If, therefore, according to him, a Nationalised Bank falls outside the purview of this Act, no appeal could be entertained by the authority constituted under Section 14 of the Shops Act.

23. In *Rajasthan State Electricity Board, Jaipur v. Mohanlal and others* : (1968)ILLJ257SC , the Rajasthan Electricity Board was held to be an authority under Article 12 of the Constitution of India. In *Dayaram Shetty v. The International Airport Authority of India* : (1979)ILLJ217SC , in paragraph 13, at page 1638, how the Government could act through its agencies has been explained. The same principle should be applicable to the facts of this case. That case also explained in the case in *H.E.M. Union v. State of Bihar* : (1969)ILLJ549SC , in paragraph 29 of its judgment. The question in that case was whether the words 'under the

authority' could mean 'pursuant to the authority'. Therefore whether the Heavy Engineering Corporation Ltd., can be said to be carrying on the business to the authority of the Central Government. The answer to this question was 'no' because the Corporation was carrying on business by virtue of the authority derived from its Memorandum of Articles of Association and not by reason of any authority granted by the Central Government. The learned Counsel states that having regard to these decisions, there could be an establishment under the control of the Government, even though it is a statutory Corporation. He states further that the tests applied to decide an authority under Article 12 have also been applied to Nationalised Bank as seen from the decision in *Lachman Dass Agarwal v. The Punjab National Bank* (1978) 52 F.J.R. 306 : 80 P.L.R. 72 : (1978) L.I.C. 423, with regard to Punjab Nationalised Bank. There the scope of Section 11 of the Nationalisation Act has also been discussed in paragraph 10 at page 428. He also draws our attention to the other cases reported in *Sukudev Ratilal Patel v. Chairman, Bank of Baroda* and another : (1977) IILLJ409Guj and *Miss P.S. Geetha v. The Central Bank of Bombay* (1978) L.I.C. 1271. He refers to the Third New Webster's Dictionary and Shorter Oxford English Dictionary in regard to the word 'under'.

24. In *H.M.T.W.S. Union v. Hindustan Machine Tools Ltd.* : (1982) ILLJ178AP , the words 'under the control of Government of India', came up for discussion under the Industrial Establishments (National Festival and other Holidays) Act. According to him Section 11 (c) of the Andhra Pradesh Factories Act corresponds to Section 4 (1)(c) of the Shops Act and the ratio of the judgment would therefore apply. The learned Counsel for the appellant, after providing us with the corresponding provisions of the Shops and Establishments Act of the various States, submits that in *Corporation of City of Nagpur v. G.S. Narayana Ayyar and Others* : (1977) IILLJ189Bom , the wording of Section 4 of the Bombay Shops and Establishments Act has been dealt with. There is a vital distinction between the word 'of' and 'under' Central Government. Therefore, that decision cannot be of any use.

25. The sheet anchor of the appellant's argument proceeds from the decision in *Canara Bank and others v. Appellate Authority* : (1981) IILLJ189Ker . That case

bristles with incorrectness. When the word 'establishment' has been defined under the Kerala Shops and Establishments Act there is nothing to go to the dictionary meaning. In paragraph 7 of that judgment, the word 'under' has been read as 'of'. In fact, there is an earlier Full Bench judgment of the very same High Court as seen from Jacob v. State Bank of Travancore : AIR1973 Ker51 (F.B.), where, under Section 3 of Kerala Land Reforms Act, the meaning of 'Corporation owned or controlled by the State, came to be laid down holding that the State Bank of Travancore, is a corporation owned or controlled by the State. This Full Bench judgment has not been noted at all in this ruling.

26. The learned Counsel for the appellant invites our attention to Bernard Schewartz's 'Legal Control of Government' 1972 Edn. pages 39 and 40, as to Nationalisation. He also cites a passage in Wade's Administrative Law, page 139 dealing with public Corporation. He refers to Black's Law Dictionary, V Edn. at page 924, wherein the word 'nationalisation' is dealt with as against the word 'denationalisation' at page 320. The learned single Judge was correct in his approach with regard to the appreciation of the Full Bench of the Kerala High Court.

27. In Biharilal v. Roshanlal : [1984]1SCR877 , having regard to the control exercised by the Central Government, the U.P. Education Committee was held to be alter-ego. This case does not help in deciding the matter to issue.

28. No doubt, in Madras State Electricity Board v. Commissioner of Labour : (1960)IILLJ357Mad , it was the clerical department of the Industries undertaking, namely, the Madras Electricity Board, which is included under Section 2 (12) (iii) of the Shops Act. Whether that would be exempt under Section 4 (1) (c) was the point to be considered. Therefore, it was not the entire establishment as such, Which came up for consideration. That decision does , not apply to the facts of the present case. Therefore, the theory of master and servant relationship existing between the Government and the employees, need not detain us.

29. Originally, Banking Companies were governed by Part X-A of the Companies Act, 1930. In 1949, the Banking Regulation Act was enacted. Therefore Part X-A was repealed. Under the Banking Regulation Act, the Reserve Bank exercised

several controls. By Nationalisation Act (Central Act V of 1970), if a change was brought about in the structure of the Bank itself, can it still be said that Shops Act, 1947 would apply? This should be the approach. Therefore it is futile on the part of the appellant to contend that the Government has control over the Nationalised Banks.

30. Mr. N.G.R. Prasad, learned Counsel for the appellant submits that Section 4 (1) (c) when it talks of an establishment under the Government, it must be construed as an equal to a department of the Government. It must be utterly dependent on government of India in the matter on the day to day administration. An establishment 'under the Government' is different from an establishment 'under the control of Government.' He requests us to note the distinctive phraseology used in Article 12 and Article 58 (2) of the Constitution of India, and it is the same interpretation that was placed in *Narayanaswami v. Krishnamurthy* : AIR1958 Mad343 . That was followed in *Krishna Prasad v. Union of India* : (1960)ILLJ326Cal and *Madras State Electricity Board v. Commissioner of Labour* (1961) 1 L.L.J. 297 : (1961) 1 M.L.J. 247. All these cases held that 'under the Government' means 'a department of the Government'. Those decisions should be applied to these cases. Strong reliance is placed on the decision in *Narayanaswami v. Krishnamurthi* : AIR1958 Mad343 , particularly the passage occurring from paragraph 29 onwards. As a matter of fact, the ruling in *Narayanaswami v. Krishnamurthi* : AIR1958 Mad343 was noted in *Manohar v; Marotrao* : [1979]3SCR1078 . The learned Counsel also cites Seervai's Constitution of India, 3rd Edn., Volume I, page 224, paragraphs 7.82 and also Seervai's Constitution of India, II Edn., Volume 2, page 1155. He also draws our attention to the corresponding provisions of the Shops and Establishments Act in the various States, like Kerala, Karnataka, Andhra Pradesh, Madhya Pradesh, Punjab and Bombay. The specific mention of Reserve Bank in Section 4(1)(c) is a relevant point, according to the appellant's Counsel. If really the intention was to exempt the banking establishments from the purview of the Act, there is no justification for mentioning the Reserve Bank of India alone.

31. Further citations on behalf of the appellant are *Warehousing Corpn. v. Tyagi* : (1970)ILLJ32SC , particularly paragraph 8; *H.E.M. Union v. State of Bihar* :

(1969)IILLJ549SC , paragraph 4 at page 85; Gurushanthappa v. Abdul Khuddas : [1969]3SCR425 , at page 749, paragraph 10. After citing the decision in Motisingh v. Bhivvadai : AIR1968 Bom370 at page 374, paragraph 15, it is urged that the word 'under' means 'subordinate to the Government'. It is this interpretation which has to be placed in this case. So construed, it cannot be held that the Nationalised Banks are subordinates of the Government, having regard to the fact that there is no absolute control over their day to day affairs.

32. Acting under the power conferred by Central Act V of 1970, the Indian Overseas Bank has framed. 'Discipline and Appeal Regulations'. They do not provide for an appeal to Central Government. That is one of the tests laid down in Biharilal v. Roshan Lal : [1984]1SCR877 The failure to provide for such an appeal to Central Government is again a point in his favour.

33. Mr. M.R. Narayanaswami, learned Counsel for the State Bank of India, petitioner in other writ petitions, draws our attention to the following important provisions of the State Bank of India Act of 1965.

Sec. 3 'Establishment of the State Bank;

Section 4 particularly the proviso dealing with authorised capital;

Section 6 dealing with transfer of assets and liabilities from Imperial Bank to the State Bank.

It is also stated therein that all the shares in the capital of the Imperial Bank shall be transferred to and vested with the Reserve Bank.

Section 10(1) deals with transferability of shares.

However, in Sub-section (2) it is clearly stated:

Nothing in Sub-section (1) shall entitle the Reserve Bank to sell its shares in the State Bank if it results in reducing the shares of the Reserve Bank to less than 55% of the issued capital.

Section 16 (1) states, the Central Office of the State Bank shall be at Bombay.

Section 16 (2) talks of the Bank having local head offices in Bombay, Calcutta and Madras.

Section 18 according to the learned Counsel is an important section, which has a bearing. That section states as follows:

Section 18 (1): In the discharge of its functions, the State Bank shall be guided by such directions in matters and policies involving public interest as the Central Government may in consultation with the Governor of the Reserve Bank and the Chairman to it.

(2) All directions given by the Central Government shall be given through the Reserve Bank. If any question arises, whether the direction relates to a matter of policy of public interest, the decision of the Central Government is final.

34. This shows the nature of appeal. Section 19 deals with the composition of Central Board; the power of appointment of Directors under Clauses (a), (b), (c-a) and (c-b); Clause (d) contemplates director from various sources. All these. Directors are appointed only by Central Government. In this connection, it is worthwhile to note Part XA of the Banking Regulation Act, 1949.

Section 20 talks of the term of office of the Chairman. That is to be fixed by the Central Government. Sub-section (1-A) deals with termination of office by Central Government. Section 21 in Clause (c) deals with the nomination of six members of a Local Board by Central Government. Section 24 deals with removal from office of Directors by the Central Government. Section 25 states even casual vacancies are to be filled by Central Government. Section 27 (2) deals with 'Salary of Chairman.

Here again it is the Central Government which determines the same. Likewise Section 29 (2) deals with the fixation of salary of the Vice Chairman.

Chapter VI of the Act concerns with the business of the State Bank of India.

Under Section 35, it is stated thus:

State Bank may acquire the business of other Banks with the sanction of the Central Government.

Under Section 37, it is stated thus:

Reserve Fund: State Bank shall establish a reserve fund consisting of the amount held in the reserve fund of the Imperial Bank transferred to the State Bank and such further sums as may be transferred to it by State Bank out of its annual net profits before declaring a dividend.

35. Sections 40, 49 and 50 also are relevant. These various provisions suggest immense or extensive control by the Central Government. The learned Counsel cites the decision in *Ramaiah v. State Bank of India* : (1963)ILLJ304Mad , in this connection and also the decision in *Som Prakash v. Union of India* .

36. In *B.S. Minnas v. India Statistical Institute* : (1984)ILLJ67SC , when the Supreme. Court held that the 'Statistical Institute of India was an 'authority' under Article 12 of the Constitution in paragraph 20 of its judgment at page 369 had applied the test of deep and pervasive control of Government of India. It is that test, which will be important. If, therefore, on an analysis, the Court comes to the conclusion there is a deep and pervasive control by Government of India over the State Bank, certainly the Bank would claim exemption under Section 4 (1) (c) of the Shops Act.

37. Mr. Gopinath learned Counsel, appearing for the second respondent, submits that the inclusion of 'bank' under Section 2 (3) of the Shops and Establishments Act, is significant. Section 42 of the Reserve Bank of India Act gives power to the said Bank to exercise control over the banks. The Reserve Bank of India is a Government Bank. If the argument of the petitioner-State Bank of India is accepted, all banks will go out of the Shops and Establishments Act. Such an interpretation is not warranted at all in this case.

38. State Bank of India is a body corporate. Its shares are freely transferable. Among the Board of Directors, one of them can be from public. On a reading of the entire State Bank of India Act, 1955, it is clear that except for a capital structure

and a policy control by Government, there is no other control. The learned Counsel draws our attention to the decision reported in Sukhdev's case : (1975)ILLJ399SC .

39. It has been held in R.D. Shetty v. The International Airport Authority : (1979)ILLJ217SC that financial assistance is one of the tests. That test is helpful to the instant case. He also cites the decision in U.P. Warehousing Corporation v. Vijayanarain : (1980)ILLJ222SC and contends that the interpretation placed by the petitioner cannot be accepted.

40. According to the learned Counsel for the second respondent in W.P. No. 11029 of 1981, unless the control by the Government of India is full and complete, it is not possible to say that the State Bank of India is under the control of Government. In law, if there is accountability even to one shareholder, it would mean that the Bank is not under the control of the Government. To support this argument, he makes a reference to Ramaiya's Company Law, page 257, paragraph 5.38. If really the Directors are in fiduciary capacity shareholders, their appointments by Government are immaterial. In this connection, the learned Counsel referred to Ramaiya's Company Law--Commentary on Section 291 of Companies Act (at page 622 of the latest edition).

41. Mr. A. Ramachandran, learned Counsel for the contesting respondents in W.P. No. 1550 of 1981, states that the existence of master and servant relationship, which is one of the important tests to be adopted in the case has been correctly held to be applicable in Madras State Electricity Board v. Commissioner of Labour : (1960)ILLJ357Mad . If really, Section 4 (1) (c) of the Shops Act, when it was amended, omitted railways, and retained Reserve Bank of India, that is a matter for consideration. Then again, the Government of Tamil Nadu itself granted exemption on the assumption that the Act is applicable. Therefore, if the Act has been so understood, there is no justification to hold to the contrary. This apart, Section 4 (1) (c) of the Shops Act neither uses the word 'instrumentality' nor 'agency'.

42. Part IV of the Constitution, when it talks of 'State' it means 'sovereign power'. The Government of India has no ownership of the State Bank of India. It is thus

argued that the State Bank of India will not fall within the purview of exemption under Section 4 (1) (c) of the Shops Act.

43. In reply Mr. M.R. Narayanaswami, learned Counsel for the State Bank of India, again draws our attention to the decision in *Pillai v. Indian Institute of Technology* (1964) II L.L.J. 311 and also to *Ramaiah v. State Bank of India* (1968) 2 L.L.J. 424. On the strength of these two cases, it could be held that there could be an employment in a public Corporation. Such an employment would be 'public employment' not being governed by Article 311 of the Constitution. In such a case, an endeavour must be made to find out the proper and appropriate meaning of the word 'under' and apply to the situation. The word 'under' is not defined under the Shops Act. The word 'under' occurring in Section 4 (1)(c) of the Shops Act must be construed in such a way as to be harmonious with other provisions of the Act.

44. The reasoning which compels the Nationalised Banks to hold that they are under the Government of India, must be applied to the State Bank as well. In regard to the State Bank the degree of control could be less. Yet, there is substantial control though there is some autonomy. The election cases do not have any bearings in determining the word 'under' since the status of the establishment alone was in question in those cases.

45. We will consider the position of (1) the Nationalised Bank and (2) the State Bank of India, in the light of Section 4 (1) (c) of the Shops Act. For that purpose, it is necessary to provide the legal backdrop. The Tamil Nadu Shops and Establishments Act as stated above, briefly referred to as the Shops Act, was enacted in the year 1947. It is an Act to provide for the regulation of conditions of work in the shops, commercial shops, restaurants, theatres and other shops and for certain other purposes. Though the Weekly Holidays Act of 1942, Central Act 18 of 1942, had been brought into force in this State from 1st January, 1947, it was limited in scope, in that it provided only for the grant of holidays and did not contain provisions for various other matters, such as, hours work, payment of wages, health and safety. Therefore, a comprehensive measure was considered necessary to regulate these matters on the lines of similar enactments in force in other States.

46. The meaning of 'Commercial establishment' can be gathered from Section 2 (3). That reads as follows:

2(3). 'Commercial establishment' means an establishment which is not a shop, but, which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking which is an Insurance Company, joint stock company, bank, broker's office or exchange and includes such other establishment as the State Government may by notification declare to be commercial establishment for the purpose of this Act.

It requires carefully to be noted that the Bank is also included under the definition. Therefore, normally any Bank would fall under this Act, since business is carried on by the Bank.

47. The word 'establishment' has been defined under Section 2 (6) of the Act. That is as follows:

2(6) 'establishment' means a shop, commercial establishment, theatre or any place of public amusement or entertainment and includes each establishment as the Government may, by notification, declare to be an establishment for the purposes of this Act.

48. The exemption clause, which is vital is contained under Section 4 (1). Clause (c) is relevant. That is extracted below:

(1) Nothing contained in this Act shall apply to (a).....(b).....

(c) establishments under the Central and State Governments, local authorities, the Reserve Bank of India, the Federal Railway authority, a railway administration operating a federal railway, and cantonment authorities;

Two striking features of this exemption clause are:

(1) The specific mention of the Reserve Bank of India; and

(2) the omission of the words 'the Federal railway authority.'

The argument proceeds that in as much as under the definition of 'commercial establishment' bank has come to be specifically included and in the exemption clause, the Reserve Bank of India alone is mentioned, it is impossible to contend that the Nationalised Bank, much less the State Bank of India would fall under the exemption clause. The correctness of this, in juxtaposition to the argument 'establishment under the Central Government', which is relevant forms the crux of the question in this case.

49. To find out whether a Nationalised Bank will fall under the exemption clause, it is necessary on our part to make a reference to the Banking Companies (Acquisition and Transfer of Undertakings) Act of 1970 (Central Act v. of 1970). Section 2 (d) defines--

Corresponding New Bank in relation to an existing Bank.

This means the Body Corporate specified against bank in column 2 of the First Schedule.

'Existing Bank' means-- a Banking Company specified in column 1 of the First Schedule.

Section 3 deals with 'establishment of corresponding new banks and business thereof'. Section 4 states 'Undertaking of Existing Banks to vest in corresponding new banks'. The general effect of vesting is stated in Section 5 as follows:

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 relating 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 outside India for the purpose of effecting such transfer or vesting, as 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 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 6 deals with payment of compensation:

Section 6 (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 if specified against each bank in the second schedule.

Section 7. Head Office and management:

(1) The Head Office of each corresponding new bank shall be at such place at the Central Government may by notification in the Official Gazette specify in this behalf and until such places at which the head office of this bank is at the commencement of this Act located.

(2) The general superintendence, direction and management of the affair 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) 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 7 persons to be appointed by the Central Government and every director shall hold office until the Board of Directors of such corresponding new bank is constituted in accordance with the scheme made under Section 9.

(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

business of the corresponding new bank shall vest with the custodian.

(5) The Chairman of an existing bank shall be the custodian and if he declines, the Central Government may appoint any other person as the custodian.

(6) The custodian holds office during the pleasure of the Central Government.

Section 8. The corresponding new banks are to be guided by the directions of the Central Government in the discharge of its functions.

Section 9. Power of the Central Government to make a scheme to carry out the provisions of this Act.

Section 9(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).

Section 11., Corresponding new bank to be an Indian Company.

Section 14., Every custodian shall be deemed to be a public servant under the Indian Penal Code.

Section 18. Dissolution....No provision of law relating to winding up of Corporations shall apply to a new bank and no corresponding new bank shall be placed in liquidation save by order of the Central Government.

Section 19. Power to make regulations.

The Board of Directors of a corresponding new bank may, after consultation with the Reserve Bank and the provisions sanctioned by the Central Government, make regulations consistent with the provisions of this Act or any scheme made thereunder for the purpose of giving effect to the provisions of this Act.

50. Whether these new banks constituted under Central Act V of 1970 will fall within the scope of Article 12 of the Constitution of India, had come up for consideration in various cases. Before we deal with the cases, it is necessary to note as to what Article 12 states in extending Fundamental Rights vis-a-vis the authorities. That Article explains the definition of 'State' which normally would

mean 'sovereign power' as under:

Article 12: In this Part unless the context otherwise requires 'the State' includes the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

In *Manoj Kanti Basu v. Bank of India* (1977) 51 F.J.R. 419, the Calcutta High Court held that the Bank of India would be an authority under Article 12 of the Constitution. A similar view was expressed in *K.S. Murthy v. Syndicate Bank* : (1976) IILLJ222AP , by the Andhra Pradesh High Court, as regards Syndicate Bank. In *S.R. Patel v. Chairman, Bank of Baroda* : (1977) IILLJ409Guj , the Gujarat High Court took also the same view as regards Bank of Baroda. *Lachman Dass v. Punjab National Bank* (1977) L.I.C. 423 : 52 F.J.R. 306, dealt with the Punjab National Bank. That is a decision of the Punjab High Court. In *Miss Geeta v. Central Bank of India, Bombay* (1978) L.I.C. 1271, the Andhra High Court was concerned with the Central Bank of India. That Court came to the conclusion that such a bank would fall under the meaning of 'authority' under Article 12.

51. It may be stated at this stage in *Lachhman Dass v. Punjab National Bank* (1978) L.I.C. 423 : 52 F.J.R. 306, the following observations are found:

Applying the principles laid down in *Sukhdev Singh's case* : (1975) ILLJ399SC , there can be no doubt that Punjab National Bank is an 'authority' within the meaning of Article 12 of the Constitution. Punjab National Bank, as distinguished from the Punjab National Bank Limited, is not a company incorporated pursuant to the provisions of the Companies Act, but is a body created by statute, namely, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It is wholly owned by the Central Government. The general supervision, direction and management of affairs and business of Punjab National Bank are vested in a Board of Directors appointed pursuant to a scheme made by the Central Government in consultation with the Reserve Bank of India. The Central Government has the power to modify the scheme from time to time. The Central Government is entitled to give directions to the Bank. The audit report is to be submitted to the Central Government and the Central Government is under an

obligation to lay the report before both the Houses of Parliament. The profits of the Bank are required to be transferred to the Central Government. The officers and the employees of the Bank are granted immunity against losses and expenses incurred in connection with the discharge of their duties. It is clear from these provisions that the Government, instead of itself carrying on the business of banking as it Certainly is entitled to, has chosen to carry on the business through the instrumentality of Punjab National Bank and other 'corresponding new Banks' created by the Statute and wholly owned by the Government. It is, 'State action' through bodies corporate, owned body and soul' (if such an expression may be used by the State). We have no doubt that the 'new corresponding Banks' are authorities within the meaning of Article 12 of the Constitution. Our view is supported by a decision of the Gujarat High Court in Sukhdev Ratilal v. Chairman, Bank of Baroda (1976) 2 S.L.R. 144, and that of a learned single Judge of this Court in Chamanlal Gupta v. Punjab National Bank. (R.S.A. No. 1797 of 1973).

19. Shri D.S. Mehra, learned Counsel for the Bank argued that the Bank continued to be a company and relied upon Section 11 of the Act, which provides that for the purposes of Income-tax Act, 1961 the Bank shall be deemed to be an Indian company. The submission of Shri Mehra is entirely without substance. Shri Mehra is confusing Punjab National Bank with the Punjab National Bank Limited. While the Punjab National Bank Limited was a Company incorporated pursuant to the provisions of the Indian Companies Act, Punjab National Bank, the corresponding new Bank, is a creature of statute. The fact that it is required to be assessed to income-tax as an Indian company does not make it a company incorporated under the Indian Companies Act. In fact, if it was a company under the Companies Act, Section II of the Act would be redundant.

It may be seen that the above ruling relied heavily on Sukhdev Singh's case : (1975)ILLJ399SC .

52. It is the contention of Mr. N.G.R. Prasad, the learned Counsel for the appellant that the tests applied to determine whether a particular authority is an authority under the Government of India, have no relevancy whatsoever to determine an establishment under the Central Government. In this case, what is necessary to be

established is that there must be a relationship of master and servant. It was that test which was adopted in a case arising under the Shops Act in Madras State Electricity v. Commissioner of Labour : (1960)ILLJ357Mad . A similar view was taken in Madras State Electricity Board v. Commissioner of Labour (1961) 1 L.L.J. 297 : (1961) 1 M.L.J. 247. The same principles have been adopted by, a Full Bench of the Kerala High Court in Canara Bank v. Appellate Authority : (1981)ILLJ189Ker and Jacob v. State Bank of Travancore : AIR1973 Ker51 .

53. In opposition to this, it is argued by Mr. M.R. Narayanaswami, learned Counsel appearing for the Bank that the tests that have been applied under Article 12 to determine whether an authority is under the Government of India would be the tests to determine the question arising here, namely, whether a particular establishment is an establishment under the Government of India.

54. We have already extracted Article 12 of the Constitution of India. In view of this Article the Courts were concerned in determining when an authority could be said to be 'under the control of government of India'. It cannot be gainsaid that this definition of 'State' is only for the purposes of Part III of the Constitution, namely, the Fundamental Rights. Part XIV of the Constitution of India, which deals with the services under the Union and the States, is inapplicable to a servant under the authority falling under Article 12 of the Constitution. That is evident from language of Article 311, where for bringing the benefit of that Article, he must be: 1) a member of a civil service of the Union; 2) a member of an all India service; 3) a member of a civil service of a State; 4) a member holding a civil post under (a) Union (b) State. We will now refer to the relevant case laws as to the tests adopted in determining the meaning of an authority under the control of the Government of India. The leading case is Sukhdev Singh's case : (1975)ILLJ399SC . There the question arose whether (1) the Oil and Natural Gas Commission; (2) Life Insurance Corporation; and (3) the Industrial Financial Corporation, are authorities within the meaning of Article 12 of the Constitution. In paragraph 29, the learned Chief Justice observed after referring to Halsbury's Laws of England, as follows:

39. A public authority is a body which had public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the

public and not for private profit. Such an authority is not precluded from making a profit for the public benefit.

44. All these provisions indicate at each stage that the creation, composition of membership, the functions and powers, the financial powers, capital, the borrowing powers, the dissolution of the Commission and acquisition of land for the purpose of the company and the powers of entry are all authority and agency of the Central Government.

50. The structure of the Life Insurance Corporation indicates that the Corporation is an agency of the Government carrying on the exclusive business of life insurance. Each and every provision shows in no uncertain terms that the voice is that of the Central Government and the hands are also of the Central Government.

In paragraph 109, Mathew, J., observed as follows:

109. The relevant provisions of the Life Insurance Corporation Act have been very clearly analysed in the judgment of my Lord, the Chief Justice, and it is unnecessary to repeat them. It is clear from those provisions that the Central Government has contributed the original capital of the Corporation, that part of the profit of the Corporation goes to that Government, that the Central Government exercises control over the policy of the Corporation, that the Corporation carries on a business having great public performance and that it enjoy a monopoly in the business. I would draw the same conclusions from the relevant provisions of the Industrial Financial Corporation Act which have also been referred to in the aforesaid judgment. In these circumstances, I think, these corporations are agencies or instrumentalities of the 'State' and are, therefore, 'State' within the meaning of Article 12. The fact that these Corporations have independent personalities in the eye of law does not mean that they are not subject to the control of Government or that they are not instrumentalities of the Government. These Corporations are instrumentalities or agencies of the State for carrying on business which otherwise would have been run by the State departmentally. If the State had chosen to carry on these businesses through the medium of Government departments, there would have been no question that actions of these departments would be 'State actions'. Why then should actions of these

Corporations be not State actions?

According to Mr. M.R. Narayanaswami, learned Counsel for the writ petitioners, having regard to the close similarity between the Life Insurance Corporation Act and Central Act V of 1970, undoubtedly Nationalised Bank would be an establishment under the Government of India'. We will now draw a tabular statement of the provisions of the two Acts.

Central Act 31 of 1956 (L.J.C. Act)

Central Act V of 1970

Section 3 Establishment

Section 3

Section 5 Capital

Section 3(3)

Section 5(2) Body Corporate

Section 3(4) Body Corporate

Section 7 Vesting section

Section 4

Section 7(2) Assets, meaning thereof

Section 5(1) Assets

Section 18 Location of Central Office

Section 7 Location of Head Office and management

Section 11 and 11(4) Provisions relating to existing employees

Sections 12, 12(2) and 12(4)

Sections 24 to 28, 28A Finance, Audit and Accounts

Section 10

Section 38 Dissolution

Section 18

Section 49 Power to make Regulations

Section 19

We have already stated that the benefit of Article 311 of the Constitution of India, cannot be availed of by the employees of an authority under the control of Government of India. Our view is based on the finding of the Supreme Court in paragraph 67 of Sukhdev Singh's case : (1975)ILLJ399SC .

55. If it is really a case of ascertaining the meaning of the word 'authority under the control of Government of India', certainly having regard to the close similarity between Life Insurance Corporation Act and Central Act V of 1970, without hesitation we would have held that the Bank is an authority. But, we are to construe the meaning of 'an establishment under the Central Government'. How best these decisions could be applied, we will consider after referring to a few other cases.

56. In *Ajay Hasia v. Khalid Mujib* : (1981)ILLJ103SC , the question arose whether the Regional Engineering College, Srinagar, one of the 15 Engineering Colleges in the country sponsored by the Government of India, would be an authority within the meaning of Article 12 of the Constitution of India. That college was established and its administration and management were carried on by a Society registered under the Jammu and Kashmir Registration of Societies Act, 1898. At page 493, it was observed:-

It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government.

This case referred to the decision in *R.D. Shetty v. The International Airport Authority of India* : (1979)11LLJ217SC , and approved the following observations contained in that judgment:

A Corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a Corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of the Government. But ordinarily where corporation is established by a statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy in matters. So also a corporation incorporated under law is managed by a Board of Directors or committee of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government?. Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control? Should the functions which the Corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions, immaterial? Now, one thing is clear that if the entire share capital of the Corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a Board of Directors appointed by Government though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from Governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate any inclusive or exhaustive test which would adequately answer this question. There is no cut and

dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not.

The Court then proceeded to indicate the different basis, apart from ownership of the entire share capital. If extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with purpose for which the Corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an instrumentality or agency of Government.... It may therefore be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation it would afford some indication of the corporation being impregnated with Governmental character..... But a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as State action-- Vide *Sukhdev v. Bhagatram* : (1975)ILLJ399SC . So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the Corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the Corporation's ties to the State.

There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the Corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action may yield to a conception of State action where public functions are being performed-- vide *Arthur S. Miller 'The Constitutional Law of the Security State'*, 10 SLR 620.

It may be noted that besides the so-called traditional functions, the modern State operates as multitude of public enterprises and discharges host of other public functions. If the functions of the Corporation are of public importance and closely related to Government functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what

was pointed out by Mathew, J. in *Sukhdev v. Bhagatram* (: (1975)ILLJ399SC , where the learned Judge said that 'institutions, engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed Government agencies. Activities, which are too fundamental to the society are by definition too important not to be considered Government functions.

The Court, however, proceeded to point out with reference to the last function test: the decisions show that even this test of public or Governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of Governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between Governmental functions and non-Governmental functions. Perhaps the distinction between Governmental and non-Governmental functions is not valid any more in a social welfare State where the *laissez faire* is an outmoded concept and Herbert Spencer's social status has no place. The contract is rather between Governmental activities, which are private and private activities which are Governmental Mathew, J., in *Sukhdev v. Bhagatram* : (1975)ILLJ399SC . But, the public nature of the function, if impregnated with Governmental character or 'tied or entwined with Governmental or fortified by some other additional factor, may render the Corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference.

These observations of the Court in the *International Airports Authority's case* : (1979)ILLJ217SC , have our full approval.

The test for determining, when a Corporation could be said to be an instrumentality, was stated in paragraph 9 as under:

9. The tests for determining as to when a Corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *International Airports Authority's case* : (1979)ILLJ217SC . These tests are

not conclusive or clinching, but they are merely indicative indicia, which have to be used with care and caution, because while stressing the necessity of a wide meaning or be placed on the expression 'other authorities', it must be realised that it should not be stretched so far as to bring in every autonomous body, which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airports Authority's case : (1979)ILLJ217SC , as follows:

(1)One thing is clear that if the entire share capital of the Corporation is held by Government it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.

(3)It may also be a relevant factor.... whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State Control may afford an indication that the Corporation is a State agency or-instrumentality.

(5) If the functions of the Corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.'

(6) Specifically, if a department of Government is transferred to a Corporation it would be a strong factor supportive of this inference of the Corporation being an instrumentality or agency of Government.

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority's case : (1979)ILLJ217SC , be an 'Authority' and, therefore, 'State' within the meaning of the expression in Article 12.

The above said decision referred to U.P. Warehousing Corporation v. Vijayanarain : (1980)ILLJ222SC , and the observations made by the learned Judge (Chinnappa Reddy, J.), are also reinforced. It was observed in paragraph 15 as under:

It is in the light of this discussion that we must now proceed to examine whether the Society in the present case is an 'authority' falling within the definition of 'State' in Article 12. Is it an instrumentality or agency of the Government? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rules of the Society. They dominated by the representatives appointed by the Central Government and the Governments of Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the college are provided entirely by the Central Government and the Government of Jammu and Kashmir and even if any other moneys are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The rules to be made by the Society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a member representing the State or Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors which is in charge of general superintendence, direction and control of the affairs of the Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have, full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State or the

Central Governments and to use the words of Rao, C.J. in Sukhdev Singh's case : (1975)ILLJ399SC , the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must, therefore, hold that the society is an instrumentality or the agency of the State and the Central Governments and it is an authority within the meaning of Article 12.

Thus, even a Society was held to be an authority within the meaning of Article 12 of the Constitution. In Electricity Board, Rajasthan v. Mohanlal : (1968)ILLJ257SC , the Rajasthan State Electricity Board was held to be an authority under Article 12 of the Constitution of India. In Heavy Engg. Mazdoor Union v. State of Bihar : (1969)ILLJ549SC , the facts are as under:

The appellant herein filed a writ petition in the High Court of Patna disputing the validity of the reference to the Industrial Tribunal by the State Government of Bihar of the two following questions for adjudication; firstly, as regards the number of festival holidays and secondly whether the second Saturday of a month should be, an off-day for the Heavy Engineering Corporation, Ranchi, a Government Company. The grounds set out in the writ, petition were two--(1) the appropriate Government to make the reference was the Central Government; and (2) the questions referred were, at the time, actually pending before the certifying authority under the Industrial Disputes Employees (Standing Orders) Act, 1946 on an application for modification of the company's Standing Orders and therefore, the said questions would not be industrial disputes that could be validly referred to adjudication. The High Court held against both the contentions and upheld the reference. Hence the instant appeal to the Supreme Court with the certificate of the High Court.

Held: the words under the authority of in Section 12(a) of the Industrial Disputes Act, 1947 mean pursuant to the authority, such as when an agent or servant acts under or pursuant to the authority of his principal or master. That cannot be said of the company incorporated under the Companies Act, 1956, which derives its powers and functions from and by virtue of its memorandum and articles of association.

The mere fact, that the entire share capital of the respondent-company was contributed by the Central Government or the fact that the President of India and certain officers of the Central Government held all its shares do not make any difference. The company is a separate entity.

No doubt, extensive powers are conferred on the Central Government including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries of the Company's employees. But these powers are derived from the company's memorandum and articles of association and not by reason of the company being the agent of the Central Government.

The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides such a corporation can easily be identified as agent of the State. In the absence of a statutory provision, a commercial corporation acting on its own behalf even though it is 'controlled wholly or partially by a Government department will be ordinarily presumed not to be a servant or agent of the State.

The contention that it is only the Central Government as the appropriate Government, could make the reference, therefore, fails.

It is the contention of Mr. N.G.R. Prasad, the learned Counsel for the appellants that the company is a separate entity and therefore, it will not be an authority, is a point in his favour. Further, notwithstanding the extensive powers being conferred on the Central Government, including the power to give direction and the power to appoint Directors, it was held that the Heavy Engineering Corporation was not an agent. There is no bar to apply the same ratio in this case as well.

57. In opposition to this it is contended on behalf of the Bank that this case dealt with the situation where, in the absence of a statute, a commercial corporation was acting on its own behalf, it could not be held to be a servant or agent of the State. Therefore, this ruling cannot govern the present case.

58. In order to set at rest this controversy, we will rather refer to the interpretation placed by the Supreme Court on this very case.

59. In the decision in *R.D. Shetty v. Airport Authority* : (1979) IILLJ217SC , to which we have already made a reference, in paragraph 29 at page 1647 the Supreme Court explains the purport of this ruling as follows:

The second decision to which we must refer is that in the *Heavy Engineering Mazdoor Union v. State of Bihar* : (1969) IILLJ549SC . The question which arose in this case was whether a reference of an industrial dispute between the Heavy Engineering Corporation Ltd., (hereinafter referred as the Corporation) and the Union made by the State of Bihar under Section 10 of the Industrial Disputes Act, 1947 was valid. The argument of the Union was that the industry in question was carried on 'under the authority of the Central Government' and the reference could, therefore, be made only by the Central Government. The Court held that the words 'under the authority' mean 'pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master' and on this view, the Court addressed itself to the question whether the Corporation could be said to be carrying on business pursuant to the authority of the Central Government. The answer to this question was obviously 'no' because the Corporation was carrying on business in virtue of the authority derived from its memorandum and articles of association and not by reason of any authority granted by the Central Government. The Corporation, in carrying on business, was acting on its own behalf and not on behalf of the Central Government and it was therefore not a servant or agent of the Central Government in the sense that its sanctions would bind the Central Government. There was no question in this case whether the Corporation was an instrument and therefore an 'authority' within the meaning of Article 12. We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the Corporation should be an agent of the Government in the sense ' that whatever it does, should be binding on the Government. It is not the relationship of principal and agent, which is relevant and material but whether the Corporation is an instrumentality of the Government in the sense that a part of the governing power of the State is located in the Corporation and though the Corporation is

acting on its own behalf and not on behalf of the Government, its action is really in the nature of State action.

60. The next case which could be referred to is *Biharilal Dombray v. Roshanlal* : [1984]1SCR877 . This case dealt with the meaning of office of profit under the Government of India and the test to be adopted for determination of such an office. At page 395, it was observed:

Even though the incorporation of a body corporate may suggest that the statute intended it to be a statutory corporation independent of the Government, it is not conclusive on the question whether it is really so independent. Sometimes the form may be that of a body corporate independent of the Government, but, in substance it may be just the alter ego of the Government itself. The true test of determination of the said question depends upon the degree of control the Government has over it, the extent of control exercised by (the) several other bodies or committees over it and their composition, the degree of its dependence on Government for its financial needs and the functional aspect, namely, whether the body is discharging any important Governmental function or just some function which is merely optional from the point of view of Government.

61. The Indian Statistical Institute which is a Society registered under the Societies Registration Act, whether would be an authority within the meaning of Article 12 of the Constitution of India, came up for consideration in *B.S. Minnas v. Indian Statistical Institute* : (1984)ILLJ67SC . In paragraph 20 at page 396, a reference was made to the earlier rulings in *Ajay Hasia v. Khalid Mujib Sehravardi* : (1981)ILLJ103SC , and held that the expression 'other authorities' in Article 12 must be given a broad and liberal interpretation. On that basis, it was concluded that having regard to the control exercised by the 'Government of India, it would be an 'authority'. In an unreported judgment (vide C.R.P.No. 2632 of 1979) to which one of us was a party the question was entirely different. There the question was whether the property of the Bank could be considered to be the property of the Government to claim the benefit of the doctrine of immunity of instrumentality. I answered in the negative. That can be of no assistance in deciding the issue involved in this case. Thus, on an analysis of the above rulings, two legal

propositions emerge;

1. The statutory Corporation like the Nationalised Bank over which the Government of India exercises deep and pervasive control is undoubtedly an 'agency' or 'instrumentality' of the Central Government;

2. No doubt, as a statutory corporation it is a legal person. As such it has separate legal status and a personality of its own. It has powers to acquire, hold and dispose of property. But that does not in any way militate against the principle of they being authorities under the control of Government of India.

62. In this context, we will now proceed to deal with the cases arising under the Shops Act of the various States. The relevant provisions with regard to execution in each of the State Acts are as follows:

Establishments Act:

1. Tamil Nadu Shops and Establishments Act--Section 4(1)(c)

Nothing contained in this Act shall apply to ... establishments under the Central and State Governments, Local Authorities, Reserve Bank of India, Railway administration operating any Railway as defined in Clause 20, Article 366 of the Constitution and Cantonment authorities.

2. Kerala Shops and Establishments Act - Section 3(1)(c)

3. Andhra Pradesh Shops and Establishments Act, Section 64(1)(b)

4. Pondicherry Shops and Establishments Act, Section 4(1)(c)

5. Karnataka Shops and Establishments Act, Section 3 (1) (a)

Nothing in this Act shall apply to offices of or under the Central and State Governments of local authorities except commercial undertakings.

6. Bombay Shops and Establishments Act--Bombay Act 1979 of 1948, Section 4

Notwithstanding anything contained in this Act, the provisions of this Act mentioned in the 3rd column of schedule 2 shall not apply to the establishments, employees and other persons mentioned against them in the 2nd column of the said schedule.

7. Schedule II-Item 1

1. Establishments of the Central Government.

2. Establishments of the State Government

* 3. Establishment of the Local Authorities.

* 4. Establishments of the Bombay Port Trust.

* 5. Establishments of any Railway Administration.

* All provisions.

63. IN *Madras State Electricity Board, v. Commissioner of Labour* : (1960) IILLJ357Mad , this Court had held that the then Madras State Electricity Board was not entitled to exemption from the purview of Section 4(1)(c) of the Tamil Nadu Shops and Establishments Act. The Court reasoned as follows:

That the Electricity Act gives the State Government a measure of control over the activities of the Board which, subject to that control, is an autonomous body, did not admit of any doubt I do not think it is necessary to discuss in detail the statutory provisions of the Electricity Act to examine the degree of control which the State Government could lawfully exercise. It was clear that the employees of the Board were not employees of the State Government. The clerical employees of the Board constituting an establishment and a commercial establishment within the meaning of Section 2(3) of the Shops and Establishments Act, were not the clerical employees of the State Government, and therefore, the establishment cannot be viewed as an establishment under the State Government within the

meaning of Section 4(1)(c) of the Act.

That the Board was under the control of the State Government did not make them employees of the Government, nor did it make the establishment consisting of the clerical employees an establishment under the State Government. It is the direct relationship of master and servant between the State Government and the persons employed in the establishment or commercial establishment that is necessary to take that establishment outside the scope of the Act under Section 4 (1)(c).

What came up for discussion in that case was whether the clerical employees of the Board would as such be the employees of the government. It was not the entire establishment as such that came up for consideration. Therefore, the insistence of the relationship of master and servant is out of place.

64. In *Madras State Electricity Board v. Commissioner of Labour* (1961) 1 L.L.J. 297 : (1961) 1 M.L.J. 247, this Court relying on *Narayanaswami v. Krishnamurthi* : AIR1958 Mad343 held that it was not a department of the Government. This reasoning was based on the ruling just now referred, namely, *Narayanaswami v. Krishnamurthi* : AIR1958 Mad343 . In that case, it was held that the Life Insurance Corporation was not a department of the Government of India. Therefore services under the Corporation would not tantamount to service under the Government. It is on this basis, Mr. N.G.R. Prasad, contends that the consistent view of this Court is, in order that it may be an establishment under the Government it should be a department of the Government. We are unable to persuade ourselves to accept this view. If really that was the intention of the law-makers,, nothing would have been easier than to state a department of a Government, under Section 4(1)(c) of the Shops Act. Even otherwise, as rightly held by our learned brother, Ramanujam, J., in *Sukhdev Singh's case* : (1975)ILLJ399SC , when the very Life Insurance Corporation has been held to be an authority within the meaning of Article 12 and. having regard to the close similarity between the provisions of Life Insurance Corporation Act and Central Act V of 1970 this ruling cannot be held to be good law any longer. It is no doubt true that the ruling in *Narayanaswami v. Krishnamurthi* : AIR1958 Mad343 , came to be noted in *Manohara v. Marotrao* :

[1979]3SCR1078 The reference is made only in passing. The Supreme Court did not deal with this aspect of the case, namely, under the Government or under the control of Government. Therefore, that ruling cannot be of any assistance to the appellant.

65. In *Corporation of City of Nagpur v. G.S.N. Ayyar* : (1977)ILLJ189Bom , the following passage occurs:

I do not think, therefore, that the learned Counsel for the respondents is on a sound footing when he says that the respondent Bank is an establishment of the Central Government.

It requires to be carefully noted that the exemption clause of the Bombay Shops and Establishments Act, in Schedule II, mentions of establishment 'of' the Central Government and not under the Central Government.' If it is to be an establishment of the Central Government, it must be part and parcel of the Central Government. The theory of agency or instrumentality or subject to the control of regulation may not arise. Therefore, having regard to the clear distinction between 'of' and 'under' occurring respectively in the Bombay Shops Act and the Tamil Nadu Shops Act, we leave this citation out of consideration.

66. The next ruling is the one reported in *Canara Bank v. Appellate Authority* : (1981)ILLJ189Ker . That case dealt with the scope of the exemption clause occurring under the Section 3(1)(c) of the Kerala Shops Act. That also uses the identical phraseology, namely, establishments under the 'Central Government' or 'State Government'. Strong reliance is placed by the appellant on this ruling. In that case, admittedly the Nationalised Bank namely, the Canara Bank, was held not to fall within the scope of the exemption clause. In paragraph 5 at page 192, it was stated thus:

5. The Counsel for the petitioner appellant contended that since the capital of the new company belongs to the Government and the Government alone can order dissolution of the company, it is a property of Government and, therefore, the establishment to manage this property is an establishment under the Government. This contention ignores the fundamental difference between the company and the

shareholders of the company. The shareholders are different from the company. They have right over the shares. That does not mean they are part owners of the company to the extent of their shares. The company has its own separate existence distinct from the shareholders and therefore the fact that the entire share capital of the bank belongs to the Government does not make the new bank a Government. It has juristic personality distinct from the State. But at the same time, it is linked with it. This is the essential feature of a State undertaking. But it will be difficult to call it an establishment under the Government. Further, the expression 'establishment' used in Section 3 cannot be equated with the undertaking. Establishment can only mean the group of persons, who form the organisation managing the undertaking. In the matter of policy this establishment may have to obey the directives but in the day to day management of the State has absolutely no control and never interferes with it. Hence it cannot be said that the establishment of these nationalised Banks are establishments under the Government. In the Shorter Oxford English Dictionary the meaning of the word 'establishment' as 'an organised staff of employees or servants including or occasionally limited to buildings in which they are located, was adopted by this Court in *Karunakaran Nair v. Authority under the Payment of Wages Act (1972)* 1 L.L.J. 350. We find that expresses the correct idea of that word used in Section 3 of the Act. Besides this exemption, there are five other exemptions and all of them convey the same idea, namely, the staff of employees or servants belonging to a certain concern. The entire concern does not come under the expression 'establishment' but only the group of persons, who run the establishment. So even if the undertaking belongs to the Government, by the fact that all the shares of the company are owned by the Government, the establishment of that undertaking is not an establishment under the Government. In this view the number of authorities cited at the Bar and all of which equate an instrumentality with the Government for the purpose of Part III of the Constitution have no application to the facts of this case. Therefore, we are unable to agree with the argument of the petitioner's Counsel that the Nationalised Bank like the Canara Bank or the Bank of India will be an establishment under the Central Government as that expression is used in Section 3(1)(a) of the Act.

Again in paragraph 7 it was observed by the Full Bench as follows:

In Chamber's Dictionary the word 'under' means beneath, below or to a position lower than that of, especially vertically lower. This meaning also explains the establishments exempted. Only establishments constituted by the Central Government with freedom to change the set up and also with the freedom to appoint and dismiss the staff can be establishments under the Central Government. But in the case of the Bank of India and the Canara Bank, they have their own staff pattern, their own conditions of service unconnected with the Government or the service rules of the Government and so are not establishments under the Central Government. Therefore, we are unable to accept the larger contention put forward by the petitioner's Counsel that the establishment of the Bank of India or Canara Bank is an establishment under the Central Government. To this extent, we agree with the decision of Khalid, J., challenged in the writ appeal.

On an analysis of this decision, it could be seen that the conclusions were based upon the following factors:

1. The decisions holding that the statutory corporations would fall within the meaning of 'other authorities' as contemplated under Article 12 of the Constitution, would be of no assistance.
2. The control over Nationalised Banks is limited only to matters of policy, as stated in Section 8 of Central Act V of 1970;
3. The Nationalised Bank is a legal person. It has a right to acquire, hold and dispose of property;
4. It is liable to income-tax as any other independent citizens;
5. In the day to day administration and in appointing, dismissing officers and staffs, the Bank has the fullest freedom and as such it is not under the Government;
6. The company has its own, separate existence distinct from shareholders and therefore the fact that the entire share capital belongs to the Government of India does not make a Nationalised Bank, a part of Government; and

7. If really it was the intention of the law makers to exempt Nationalised Banks, there is no reason why Reserve Bank of India alone must be mentioned.

With great respect, we are unable to accept these reasonings. As a matter of fact, in another Full Bench of the very same High Court reported in *Jacob v. State Bank of Travancore* : AIR1973 Ker51 . In that case, the Corporation was the State Bank of Travancore. In paragraph 7 it was observed as follows:

Then it was contended by the appellant that the Corporation in this case, viz., the State Bank of Travancore, is not one owned or controlled by the State. We were taken though the provisions of the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, and the Reserve Bank of India Act, 1934. The position disclosed is that the Reserve Bank of India owns not less than 55% of the shares in the State Bank of India, and cent per cent of the shares in the Reserve Bank of India are owned by the Government. We find too, that a subsidiary bank such as the State Bank of Travancore is to act as an agent of the State Bank of India if required. Section 36 of the Subsidiary Banks Act, 1959, and that the State Bank of India is to act as an agent of the Reserve Bank if so required (Section 32 of the State Bank of India Act). Again, under Section 37 of the Subsidiary Banks Act, the Central Government has power, after consultation with the Reserve Bank to direct the subsidiary banks to carry on any business or to prohibit such banks from carrying on any business. Under Section 24 of the Subsidiary Banks Act, the State Bank has the right of issuing any directions, and the subsidiary banks are bound to comply. Section 25 provides for the constitution of the Board of directors of the Subsidiary Bank. Section 27 provides that the General Manager of a Subsidiary Bank who is to carry on the day to day administration is to be appointed only with the approval of the Reserve Bank. A conspectus of these provisions leaves us in no doubt that there is Governmental control in regard to shareholding as well as in regard to the transactions of affairs by subsidiary banks of the type of the respondent in this appeal. We are therefore of the view that the State Bank of Travancore is a Corporation owned or controlled by the State. The result is that it is entitled to plead the benefit of the exemption engrafted by Section 3(1)(i) of the Act.

This decision unfortunately was not noted in the later Full Bench decision, though one of the learned Judges (Viswanatha Sastri, J.) was a party to the earlier ruling.

67. It cannot be gainsaid that the principle applicable to the determination of 'an authority' under Article 12 can bodily be imported in deciding the meaning of establishment 'under the Government'. However, the line of reasoning, namely, the theory of deep and pervasive control must prevail to find out whether the statutory corporations are under the Central Government or functioning independently. It is not correct to state that the control of Government of India relates only to matters of policy as adumbrated under Section 8 of Central Act V of 1970. On the contrary, there is every conceivable control over--

1. Capital Funds; 2. The location of the Head office at such places as the Central Government may direct; 3. The power of general superintendence; 4. The Constitution of the Board by the Central Government; 5. The Custodian holding office under the pressure of the Central Government; 6. The policy of the Central Government to be followed under Section 8, 7. The power of the Central Government to make a scheme to carry out the provisions of the Act, the Custodian being a public servant; 8. Regulations to be made after sanction of the Central Government.

Therefore, it is clear from the above distinctive provisions that the finance flows from the Government of India. The appointment of directors, the reduction or enhancement of the capital either splitting up, of or amalgamation of the various Banks and the net profit of all the Nationalised Banks vesting with the Government clearly indicate that the

voice of the Nationalised Banks is the Voice of the Central Government. We are in entire agreement with our learned brother Ramanujam, J., when he says that the voice of the Nationalised Banks is the voice of the Central Government. We would, however, and that the Nationalised Bank is merely 'his master's voice'.

68. No doubt, the Reserve Bank of India has been, by a specific mention, excluded from the purview of the Act under Section 3(1) (c) of the Kerala Act, as well as the corresponding provision in the Tamil Nadu Act. That, in our considered

view, cannot mean that it was not the intention of the Legislature, not to exempt the Nationalised Banks.

69. The Reserve Bank of India was constituted under Central Act 2 of 1934. The object of the Act was to constitute a Reserve Bank of India to regulate the issue of the Bank notes and keeping of reserve with a view to securing monetary system in India and generally to operate the currency and credit system of the country to its advantage. At that time there was disorganisation of the monetary system of the world and therefore in the Preamble of the Act, it was observed that in the present disorganisation of the monetary system of the world it is not possible to determine what will be suitable as a permanent basis for the Indian monetary system. But whereas it is expedient to make temporary provision on the basis of the existing monetary system, and to leave the question of the monetary standard best suited to India to be considered when the international monetary position has become sufficiently clear and stable to make it possible to frame permanent measures. Originally it was a shareholders' bank. Because, it is considered to be expedient to bring the share capital of the Reserve Bank to public ownership, Central Act 62 of 1948 was enacted. That came into force on the appointed day, namely, 1st January, 1949. That was the Act to bring the share capital of the Reserve Bank to public ownership and to make Consequential amendments in the Reserve Bank of India Act, 1934. Section 3 of the Act is as follows:

3. Transfer of Bank shares: (1) On the appointed day (a) all shares in the capital of the bank shall by virtue of this Act be deemed to be transferred free of all trusts, liabilities and encumbrances to the Central Government; and

(b) as full compensation therefor, the Central Government shall issue to every person who, immediately before the appointed day, is registered as the holder of any such shares, an amount calculated at the rate of one hundred and eighteen rupees and ten annas per share, in promissory notes of the Central Government bearing interest at the rate of three per centum per annum repayable at par on such date as may be specified in this behalf of the Central Government:

Provided that, where the amount so calculated is not an extent multiple of over one hundred rupees the amount in excess of the nearest lower multiple of one

hundred rupees shall be paid by cheque drawn on the bank; Provided further, that in respect of any share obtained at par from the Central Government by any Director of the Bank in pursuance of Sub-Section (8) of Section 4 of the Principal Act as in force immediately before the appointed day, the said amount shall be calculated at the rate of one hundred rupees per share,

(2) Notwithstanding the transfer of shares effected by this section any shareholder who, immediately before the appointed day, is entitled to payment of dividend on the shares held by him shall be entitled to receive from the bank;

(a) all dividends accruing due on the shares in respect of the year ending on the 30th day of June, 1948 or any preceding year remaining unpaid on the appointed day;

(b) dividends calculated at the rate of four rupees per annum per share in respect of the period from the 1st day of July, 1948 to the appointed day.

Tamil Nadu Shops Act is of the year 1947. At that time the Reserve Bank of India was merely a shareholders' Bank, since Act 62 of 1948 had not been enacted. Therefore, a specific exemption had to be granted. The Kerala Act, though enacted in 1960, -merely copied Section 4(1)(c) of the Tamil Nadu Act. Hence, much cannot be made out of the same.

70. We have already analysed various cases arising under Article 12 of the Constitution of India. The difference in language between Article 12 of the Constitution of India which says 'an authority under the control of the Government and Section 4(1)(c) of Shops Act which says an establishment 'under the Government of India' cannot be lost sight of. Therefore, it becomes imperative to ascertain the meaning of the word 'under'.

Webster's Third New International page 2487: Under--'in or into a condition of subjugation, regulation or subordination'.

Shorter Oxford English Dictionary, Vol. II, 3rd Edn. page 2290: 'Subordinate, of lower rank or position'.

In senses denoting subordination or subjugation, with abstract or other subject, denoting the authority or control, direction, case, examination, restraint, etc. In or into a position or state of subjugation or submission.

The Compact Edition of the Oxford English Dictionary, Volume II: Subordinate, subjected to.

The Grollier International Dictionary, Volume II: Under--'subject to the authority, rule control of.

Subject to the supervision, instruction or influence of.

Webster's Dictionary of the English Language--Encyclopedia--Edition--Unabridged II:

Under page 1992 (5) in a position of inferiority or subordination to, subject to the rule, Government, direction, guidance, instruction or influence, of, as he is under my care, I served under his father.

(5) in a state of liability, obligation. Under--adv. (2) Lower in authority, position, power, etc., subordinate.

(3) held in control or restraint; used predicative.

Bouvier's Law Dictionary: Under ... The term sometimes used in its literal sense of 'below in position' but more frequently in its secondary meaning of 'inferior' or subordinate.

The Compact Edition of the Oxford English Dictionary (3486): Under ... Inferior, subordinate, or lower rank or position (10) ... Denoting subordination to; or control by, a person or persons having or exercising, recognising authority or command.

(13) with abstract or other subs, denoting authority or control, with or without specification of the person or persons exercising it.

71. In Venkataramaiya's Law Lexicon at page 1766 (1971 Edn.) it is stated as follows:

'Under--Under has the same significance as 'by virtue of, 'by or through the authority of,

72. In *Zila Parishad v. Shanti Devi* : AIR1965 All590 , the word 'under' came up for interpretation while considering the words 'done under an Act'. It was observed:

'Under' has the same significance as 'by virtue of, 'by or through the authority of, vide 43; 'Words and Phrases' page 84 and Supplement page 33. In *Vithoba Babaji v. Sholapur Municipality* : AIR1947 Bom241 , it was said that there is no material difference as to the principle involved between the words of Section 80, Civil Procedure Code, and the words 'done or purporting to have been done in pursuance of the Act', occurring in Section 206 of the Bombay Municipalities Act.

73. With this, we pass on to the meaning of the word 'under control'. In Stroud's Judicial Dictionary of Words and Phrases, Vol. 5, it is found as under:

'Under control'--See control

The word 'control' is wide enough to include many types of possession which are not commensurate with full ownership'.

'Control' will cover the right to tell the possessor what is to be done. A train is not 'under the control' of the Railway company running it, if in the matter complained of the company are prevented by Vis Major, e.g., the Postmaster General acting under statutory power.

74. Therefore, if the Nationalised Bank is subject to the authority or control of the Government of India, which is the meaning of the word 'under' as seen above, the principle of deep and pervasive control may be applied in considering Section 4(1)(c) of the Shops Act.

75. In *Motisingh v. Bhaivvalai* : AIR1968 Bom370 , in para, 15 it is observed as follows:

In Clause (a) of Article 19(1) of the Constitution the expression used is 'any office of profit under the Government'. The use of the word 'under' would obviously connote a subordination to the Government. As I would show in the sequel, the

provisions of the Act would no doubt show that the respondent was working under the local authority of the Zilla Parishad, but Article 19(1)(a) of the Constitution, unlike Article 58 does not include persons holding an office under a local authority. Article 58 of the Constitution prohibits a person holding an office of profit not only under the Government of India or the Government of any State, but also under any local or other authority subject to the control of any of the said Governments from contesting election as the President of India. Similar provision is, however, not made in Article 91(1)(a) and the omission of profit under any control or other authority subject to the control of any of the said Governments from that article is not without significance. That would only show that the Parliament wanted to debar a person holding an office of profit under the Government of India or State Government for contesting elections to the legislative Assemblies of the State, because of the possibility of a conflict between duty and self interest, but it did not intend to debar a person holding an office of profit under a local or other authority subject to' the control of any of the said Governments, presumably because there was no likelihood of a conflict between duty and self-interest.

This case is easily distinguishable, because it was only the local authority that was the subject matter of this ruling. Undoubtedly, every local authority: is a pocket of local State Government. Therefore, we cannot hold that 'under' means 'most subordination' so as to equate it to a department as contended by the appellant.

76. In *Gurushanthappa v. Abdul Khuddus* : [1969]3SCR425 , the following observations are found:

We are unable to accept the proposition that the mere fact that the Government had control over the Managing Director and other Directors as well as the power of issuing directions relating to the working of the company can lead to the inference that every employee of the company is under the control of the Government. The power of appointment and dismissal of respondent No. 1 vested in the Managing Director of the company and not in the Government. Even the directions for the day to day work to be performed by respondent No. 1 could only be issued by the Managing Director of the company and not by the Government. The indirect control of the Government which might arise because of the power of the

Government to appoint the Managing Director and to issue directions to the company in its general working does not bring respondent No. 1 directly under the control of the Government. In Gurugobinda Basu's case : [1964]4SCR311 , the position was quite different. In that case the appellant was appointed by the Government and was liable to be dismissed by the Government. His day to day working was controlled by the Controller and Auditor General who was a servant of the Government and was not in any way an office-bearer of the two companies concerned. In fact, the Court had no hesitation in holding that the appellant in that case was holding an office of profit under the Government, because the Court found that the several elements which existed were the power to appoint, the power to dismiss, the power of control and give directions, as to the manner in which the duties of the office are to be performed, and the power to determine the question of remuneration. All these elements being present, the Court did not find any difficulty in finding that the appellant was holding an office of profit under the Government. In the case before us, the position is quite different. The power to appoint and dismiss respondent No. 1 does not vest in the Government, or in any Government servant.

The power to control and give directions as to the manner in which the duties of the office are to be performed by respondent No. 1 also does not vest in the Government, but in an officer of the company. Even the power to determine the question of remuneration payable to respondent No. 1, is not vested in the Government which can only lay down rules in relation to the conditions of service of the employees of the company. We are unable to agree that in these circumstances, the indirect control exercisable by the Government because of its power to appoint the Directors and to give general directions to the company can be held to make the post of Superintendent, Safety Engineering department, an office of profit under the Government.

77. But in the case on hand, the tests employed in paragraph 10 of this judgment (cited supra) are necessary including the fixation of remuneration. No doubt, there is no provision for an appeal in the Discipline and Appeal Regulations of the Bank in question, Indian Overseas Bank. That was one of the tests laid down in *Biharilal v. Roshanlal* : [1984]1SCR877 , in paragraphs 18 and 21 respectively. The

following is the observation at page 395:

The rules made regarding the disciplinary proceedings in respect of the teachers in the basic schools managed by the Board as observed earlier vest the final voice in the State Government or its officers and almost the entire financial needs of the Board are met by the Government. The Board for all practical purposes is a department of the Government and its autonomy is negligible.

But that cannot be the sole and exclusive test. The Legislative intention with regard to the word 'under' will have to be gathered from the language and also from the context.

It is well settled that where the language is ambiguous, that construction will have to be preferred which will preserve such a remedy to one which bars or defeats it. Normally, a Court should avoid an interpretation upon a statute of this type; which may have a penalising effect, unless it is driven to do so by the irresistible 'force of the language employed by the Legislature.

As regards context, it has to be stated as follows:

The meaning of the words used in particular statute has to be construed with reference to the context, and not in isolation. However, it is not possible to lay down any rule of universal application in this matter. In construing the words in a Section of an Act, it is not to take those words in vacua so as to speak and attribute to them what is sometimes called natural and ordinary meaning. One has to read the statute as a whole and ask oneself the question, in this context relating to the subject matter 'what is the true meaning of the word? It is also well settled that the words derive colour from these which surround them.

So construed, it cannot but be interpreted as subject to the 'authority' or 'rule', 'control'. The control of the Government of India over the Nationalised Banks is enormous as seen above and therefore we have no hesitation in agreeing with the learned single judge.

78. We do not think that it is necessary to refer to the election cases as they do not have any bearing in deciding the question of the status of establishment, which is

the issue in this case.

79. Now we will go to deal with the State Bank of India. This Bank was constituted for the expansion of banking activities on a large scale more particularly in the rural and semi-urban areas, and for diverse other public purposes and to transfer to it the undertaking of Imperial Bank of India and to provide for other matters connected therewith or incidental thereto. The Imperial Bank of India was constituted and reasons of the Acts are relevant for our purposes. That may now be set out--

State Bank of India Act, 1955 (Act 23 of 1955)-- The Reserve Bank of India had appointed in August, 1951 a Committee of Directors for conducting an All India Rural Credit Survey. The general report of the survey embodying the committee's recommendation was received last year. The report makes comprehensive recommendation relating to numerous aspects of the problem of rural credit. One of the important recommendations and an integral part of the solution of the rural credit problem propounded by the committee is the setting up of a State Bank of India as 'one strong integrated patterned commercial banking institution with an effective machinery of branches spread over the whole country for stimulating banking development by providing vastly extended remittance facilities for co-operation with other banks and following a policy which would be in effective concurrence with national policies adopted by Government without departing from the canons of sound business. Such a State Bank of India is envisaged as coming into being by the amalgamation of the Imperial Bank of India with certain 'State associated' banks. On the 28th December, 1954, Government announced that they accepted in principle this recommendation of the committee and that they had decided as a first step towards the setting up of such an institution, to assume effective control over the Imperial Bank. The Bill seeks to give effect to this decision.

Suitable provisions are made relative to the acquisition of the undertakings of the Imperial Bank, the taking over of the business and staff, the payment of the compensation to shareholders, the setting up of an appropriate machinery for the governance of the State Bank of India, the business which the Bank may and may

not transact, etc.. It is contemplated that the Reserve Bank will always hold a minimum share holding of 25 per cent in the paid-up capital of the Bank. By virtue of this holding and the composition of the Board of Directors of the Bank as well as by virtue of the power to give directions in matters of policy involving public interest vested in the Central Government it is provided that the general working of the State Bank of India shall be responsive to and in consonance with Government policies while the autonomy of the institution in the day-to-day working will be fully maintained. Amendments necessary to the Reserve Bank of India Act, 1934, and to the Banking Companies Act, 1947, consequently to the establishment of this Institution have been provided for in the Third and Fourth Schedules to the Bill.

80. This Act underwent two amendments one in 1955 itself and in 1964 by amending Act 33 of 1955 and Act 35 of 1964 respectively. The reasons for those amendments can best be found from the statement and objects of those amending Acts:

Amending Act 33 of 1955 : The scheme of the State Bank of India Act, 1955, envisaged the State Bank of India coming into existence and the Imperial Bank of India going out of the existence simultaneously on the appointed day, (being the day notified, i.e., in this behalf by the Central Government and provided for the automatic transfer of all the assets and liabilities of the undertaking of the Imperial Bank of India from the institution to the State Bank of India. While there was . no difficulty about such transfer so far as the assets and liabilities of the Imperial Bank of India situated in India were concerned, Government were advised that it was doubtful whether such an automatic transfer of assets and liabilities made by virtue of an Indian Law from one corporate body to another would be recognised and given effect to in foreign countries in respect of the assets and liabilities of the foreign branches of the Imperial Bank of India. In the light of the advice obtained in this legal issue from Counsel in the different foreign countries concerned, it was decided that it would be advisable to amend the scheme of the Act and to provide for the continued existence of the Imperial Bank of India as a corporate entity beyond the 'appointed day' to enable it to make over its business in the foreign branches by execution of documentary transfers, if necessary, by the corresponding branches of the State Bank of India, to be opened there. It was,

therefore, necessary to amend the State Bank of India Act, 1955, and as this had to be done prior to 1st of July, 1955, which had been notified as the appointed day' under the State Bank of India Act, the State Bank of India (Amendment) Ordinance, 1955, was promulgated on 23rd June, 1955. The present Bill seeks to convert that Ordinance into an Act.

State Bank of India Act, 1955 (Amending Act 34 of 1964)... The business and activities of the State Bank of India have increased very considerably, since the Bank was established on 1st July, 1955. It is, therefore, considered desirable that provision should be made for facilitating the creation of a large number of local head offices, for certain changes in the composition' of the Central and Local Boards of the Bank and for vesting some specific powers in the Local Boards so as to enable the Bank to dispose of the business expeditiously and to improve the quality of the services generally.

An integration and development fund was created in 1955, for financing the development activities of the Bank. As the balance in the fund is now adequate, it is proposed to modify the relevant provisions of the Act, so as to limit the accommodation in the fund at any time to a sum of Rs. 5 crores.

81. We will now compare the provisions of Central Act V of 1970 and the State Bank of India Act:

Act V of 1970

State Bank of India Act

Preamble to the Act.

Preamble to the Act.

Section 2(d). 'Corresponding New Bank' in relation to an existing bank means the Body Corporate specified against bank in column 2 of the first Schedule.

Section 3: Establishment of the State Bank, (i) A Bank called the State Bank of India shall be constituted to carry on the business of banking and other business in accordance with the provisions of this Act and for the purpose of taking over the

undertaking of the Imperial Bank.

(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.

(ii) The Reserve Bank together with other persons as may from time to time become shareholders in the State Bank in accordance with the provisions of this Act shall constitute a Body Corporate with perpetual succession.

Section 3: Establishment of corresponding new banks and business thereof.

(3) The entire capital of each corresponding new Bank shall stand vested in and allotted to the Central Government.

Section 4: Undertaking of existing Banks to vest in corresponding new Banks.

(iii) The State Bank shall have the power to acquire the whole property and to dispose of the same.

Section 5: General effect of vesting.

Section 4. Authorised capital: The Authorised capital shall be Rupees twenty crores divided into rupees twenty lakhs of fully paid up shares of Rupees one hundred each provided that the Central Government may increase or reduce it.

Section 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 bank in the second schedule.

Section 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 specified in this behalf and until such place is so specified, shall be at such place at which the head office of this Bank is on the commencement of this Act located.

Section 5(1). Issued Capital: Rupees five crores sixty two lakhs and fifty thousand divided into shares, which stand allotted to the Reserve Bank of India in lieu of the shares of the Imperial Bank.

(2) The Central Board may from time to time increase the issued capital but no increase to be in a manner that the Reserve Bank holds less than 55 per cent of the issued capital.

(3) No increase in the issued capital beyond twelve crores and fifty lakhs of rupees without prior sanction of the Central Government.

(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 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.

Section 6. Transfer of Assets and liabilities from Imperial Bank to the State Bank:-

All shares in the capital of the Imperial Bank shall be transferred to and vested with the Reserve Bank. -

(3) 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 7 persons to be appointed by the Central Government and every Director shall hold office until the Board of Directors of such corresponding new Bank is constituted in accordance with the scheme made under section 9.

Section 9. Compensation to be given to shareholders of Imperial Bank: (1) Every person who immediately before the appointed day is registered as a holder of shares in the Imperial Bank shall be entitled to compensation in accordance with

the provisions of the first Schedule.

Section 10. The shares of the State Bank shall be freely transferable subject to subsection 2.

(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 business of the corresponding new Bank shall vest with the custodian.

(2) Nothing in sub-section 1 shall entitle the Reserve Bank to sell its shares in the State Bank if it results in reducing the shares of the Reserve Bank to less than 55 per cent of the issued capital.

(5) The Chairman of an existing bank shall be the custodian and if he declines the Central Government may appoint any other person as the custodian.

Section 11. No person shall be registered as a shareholder in respect of any shares held by him or, jointly with any other person in excess of 200 shares. This restriction shall not apply to the institutions referred to in the proviso to the section.

(6) The custodian holds office during the pleasure of the Central Government.

Section 12. Shares to be approved securities.

Section 13. The principal register of shareholders to be kept at the Central Office.

Section 16(1). The Central Office of the State Bank shall be at Bombay.

(2) The State Bank shall have local head offices in Bombay, Calcutta and Madras.

Section 17. Management:

(1) The general superintendence and direction of the affairs and business of the State Bank shall be entrusted to the Central Board, which may exercise all powers as may be exercised or done by the State Bank and are not by this Act expressly directed or required to be done by the State Bank in the general meeting.

(2) The Central Board in discharging its functions shall act on business principles of public interest.

Section 18(1). In the discharge of its functions State Bank shall be guided by such directions in matters and policies involving public interest as the Central Government may in consultation with the Governor of the Reserve Bank and the Chairman give to it.

(2) All directions given by the Central Government shall be given through the Reserve Bank. If any question arises where the direction relates to a matter of policy of public interest, the decision of the Central Government is final.

Section 8. The corresponding New Bank to be guided by the directions of the Central Government in the discharge of its functions.

Section 19. Composition of the Central Board: It shall consist of:-

(a) A Chairman and a Vice Chairman to be appointed by the Central Government in consultation with the Reserve Bank and after consideration of the recommendations of the Central Board.

Section 9. Power of the Central Government to make ' a scheme to carry out the provisions ' of this Act.

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

(b) Not more than two Managing Directors appointed by the Central Board with the approval of the Central Government.

b.(b). Presidents of the Local Boards appointed under Sub-section (5) of section 21.

Section 11. Corresponding new Bank to be deemed to be an Indian Company.

C. 1. If the total amount of holding of the shareholders other than Reserve Bank is not more than 10 per cent of the total issued capital -- 2 Directors.

2. Not less than 10 per cent but not more than 25 per cent -- 3 Directors.

3. More than 25 per cent -- 4 Directors to be elected.

c (a). One Director from among the employees, who are workmen of the State Bank to be appointed by the Central Government.

c (b). One Director among employees as are not workmen.

(d) Not less than 2 and not more than 6 Directors nominated by the Central Government in consultation with the Reserve Bank.

(e) One Director to be nominated by the Central Government.

(f) One Director by the Reserve Bank.

Section 20. Term of office of Chairman and Managing Director, etc.:-

Section 21. Local Boards to be constituted at each place where the State Bank has a local head office.

(A) Terms of office of the members of the local Board.

(B) Powers of the local Board.

(C)Local Committee.

Section24. Removal from office of Directors.

Section25. Casual vacancies.

Section26. Remuneration of Directors.

Section27. Powers and remuneration of the Chairman.

Section28. Powers and remuneration of the Vice Chairman.

Section29. Powers and remuneration of the Managing Director.

Section31 Meetings of the Central Board.

Section33. Other business which State Bank may transact.

Section35. The State Bank may acquire the business of other Banks with the sanctionof the Central Government.

Section37. Reserve Fund:- State Bank shall establish a reserve fund consisting ofthe amount held in the Imperial Bank transferred to the State Bank and assuch further sums as may be transferred by it to State Bank out of its annualnett profits before declaring a dividend.

Section38. Disposal of profits: Out of its net profits the State Bank may declare a dividendafter making provision for the requirements mentioned in the section. Therate of dividend shall be determined by the Central Board.

Section 18. Dissolution: No provision of law relating to winding up of Corporation shall apply to a new Bank and no corresponding new Bank shall be placed in liquidation save by order of the Central Government.

Section 42(1). Balance Sheet etc., of State Bank may be discussed at the General meeting. The general meeting referred to as an Annual General Meeting shall be held annually at such place where there is a local Head Office of the State Bank as shall from time to time be specified by the Central Board and the general meeting may be convened by the State Bank at any time.

(2) As to the liquidation of the State Bank, save by order of the Central Government.

Section 19. Power to make regulations: The Board of Directors of a corresponding new Bank may, after consultation with the Reserve Bank and the provisions sanctioned by the Central Government, make regulations consistent with the provisions of this Act or any scheme made thereunder for the purpose of giving effect to the provisions of this Act.

Section 49. Power of Central Government to make rules in consultation with the Reserve Bank for the purpose of giving effect to the provisions of the Act.

Section 50. Power of Central Board to make regulations with the sanction of the Central Government.

82. We have already noted the definition of the word 'establishment' under the Tamil Nadu Shops Act which includes 'a bank'. However, it is no doubt correct as Mr. Gopinath, learned Counsel would contend that if the argument of the petitioner is accepted, all the banks would go out of the Tamil Nadu Shops Act. Apart from the Nationalised Banks, which have been taken over under Central Act V of 1970, there are still other banks which would certainly fall within the definition of 'establishment' under Section 2(3) of this Act. No doubt in *Raman v. LA. Authority of India* : (1979) 11 LLJ 217 SC, in paragraph 19, finance assistance is stated to be one of the tests. Here also the shareholding of the State Bank of India is as under: The affidavit of R.C. Royappa may now be extracted to show the percentage of

shareholders:

The authorised capital of the Bank is Rs. 20 crores consisting of 20 lacs shares of Rs. 100 each. The issued and subscribed capital is Rs. 5,62,50,000/- consisting of 5,62,500 shares of Rs. 100/-each. The total number of shareholders of the Bank is 2749 which consists of Reserve Bank of India, 73 other institutions and Government agencies and 2675 individual shareholders. Out of the total of 5,62,500 shares, Reserve Bank holds 5,18,000 shares, i.e., 92% financial institutions and Government agencies 3.4 and individual shareholders 4.6% of the holdings.

This clearly shows that 92% of the share holdings is by financial institutions; 3.4% by Governmental agencies and 4.6% alone is in the shareholding. It is on this basis that it is argued by Mr. Marthandam, if there is accountability even to one shareholder, it would not mean 'under the control of the Government'.

83. In order to appreciate as to what exactly is the nature of control the Central Government has over the State Bank of India, we would now go to the rulings of this Court. In *Ramiah v. State Bank of India, Madras* : (1963)IILLJ304Mad , the question arose as to whether the State Bank of India was an 'authority' within the meaning of Article 12 of the Constitution. At pages 315, 316 and 317 it was held as follows:

Having regard to the said consideration, is the State Bank of India a public authority? The preamble to the State Bank of India Act, 1955, sets out its objects, namely, the extension of banking facilities on a large scale more particularly in the rural and semi urban areas and for diverse other public purposes and to transfer to the State Bank the undertaking of the Imperial Bank of India. Section 3 established the State Bank of India to carry on the business of banking and other business in accordance with the provisions of the Act and for taking over the undertaking of the Imperial Bank. The Bank is to be a body corporate with perpetual succession and a common seal. Sections 4 and 5 provide for authorised and issued capital. It is to be noted that increase or reduction of the authorised capital of Rs. 20 crores can only be done by the Central Government. Further, a specified issued capital of the State Bank stands allotted to the Reserve Bank in lieu of the shares of the

Imperial Bank transferred to and vested in the State Bank. Any increase of the issued capital is controlled by the Reserve Bank subject to the further provisions that no increase in the issued capital beyond Rs. 12,50,00,000/- shall be made without the previous sanction of the Central Government. The Reserve Bank shall at all times have not less than 50 per cent of the shares and by Section 11 individual holdings are restricted. By Section 13, the bank shall keep at its Central Office a register of shareholders containing the prescribed particulars. Unless otherwise provided by the Central Government by notification, the Central office of the State Bank is to be at Bombay. The State Bank is enjoined by Section 16 to open local head offices as well as open and maintain its branches. Section 18 which is important, says that--'In the discharge of its functioning including those relating to a subsidiary bank, the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank give to it.

The section further provides that--

all directions given by the Central Government shall be given through the Reserve Bank and, if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

The Central Government will constitute the first Central Board of Directors. The Composition of the Board should be such that eight of the directors should be nominated by the Central Government in consultation with the Reserve Bank to represent and not more than two managing directors will be appointed by the Central Board but with the approval of the Central Government. Apart from these nominations, the Central Government can make one more nomination of a director. A managing director shall hold office for such term not exceeding a certain period as the Central Government may fix. In the constitution of local board and local committees too the Central Government is entrusted with powers of nomination of directors to be elected. The powers of removal of the Chairman, Vice Chairman in the Central Board are vested in the Central Government. The

Chairman is to receive such salary of the Central Board may determine with the approval of the Central Government. The Central Government has also got an effective voice in the fixation of remuneration to the Vice Chairman. The Bank, among its other duties, should act as the agent of the Reserve Bank of India, for paying, receiving, collecting and remitting money, bullion and securities on behalf of any Government in India. The State Bank under Section 40 should furnish to the Central Government and the Reserve Bank of India within a stated time its balance sheet together with the profit and loss account and the auditors' report on the working of the State Bank during the period covered by the accounts. The auditors also are required to make a report to the Central Government. The Central Government is also vested with power to remove any difficulties in respect of certain matters by issuing specific orders and also in consultation with the Reserve Bank and by notification in official gazette, make rules to carry out the purposes of this Act. The Central Board can make regulations only after consultation with the Reserve Bank and with the previous sanction of the Central Government not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. Disposal of profits is dealt with by Section 38 which says that- 'after making provision for bad and doubtful debts, depreciation in assets, equalisation of dividends, contribution to staff and superannuation funds and for all other matters for which provision is necessary by or under this Act or which are usually provided for by banking companies, the State Bank may, out of its net profits, declare a dividend', the rate being determined by the Central Board subject to the provisions of para. 6 of Schedule I. Having regard to these provisions of the Act, particularly the public purpose, which it is meant to serve, the extensive Government control over the Bank including several matters of policy, appointment and removal, fixation of remuneration of particular officers of the Central Board and the power, of nomination and appointment of directors, the statutory audit subject to Government control, the obligation of the Bank to send returns to the Central Government, the obligation to the auditor also to forward audit reports to the Central Government and the power of the Central Government to wind up the bank, there can be no doubt, in my opinion, that, the State Bank of India is a public authority. It is also clearly charged with public duties by various

provisions of the Act in respect of several matters. It is impossible to say that on ground of the provision for disposal of profits, the State Bank of India is a commercial concern constituted for gain. The disposal of profits as provided by Section 38 is not the primary object of the establishment of the State Bank, but it is incidental to the nature of the business transactions by the bank. I hold, therefore, that the State Bank is public authority, a corporation within the meaning of Section 45 of the Specific Relief Act, and an authority within the meaning of Article 226 of the Constitution. But whether and to what extent it is subject to judicial control or interference with, under or outside that article, is a different matter, which I shall immediately proceed to consider.

84. This ruling was upheld by a Division Bench of this Court in appeal in W.A.No. 180 of 1963, dated 22nd December, 1966 (vide Ramaiah's case : (1968)ILLJ424Mad . It was held at page 429:

In the light of these facts, we do not think that it is necessary to further discuss the criteria for this test, argued by Sri M.K. Nambiar before the learned Judge (Veeraswami, J.), namely, whether the organisation derives its existence from statutes, whether it is incorporated by a special statute, whether it is controlled by Government, and its functions are, partly or wholly, the functions of Government. Sri Tiruvenkatachari, no doubt, contends that even commercial organisations, with profit sharing and the earnings of profits as essential components of their objectives, and which thus belong to the private sector, if we may so term it, may owe their existence to statutes, certainly several did so in the United Kingdom... But the point is not this. The point is that, so far as the State Bank of India is concerned, as the learned Judge (Veeraswami, J.) has conclusively shown, by an elaborate analysis of the State Bank of India Act, 1955, which need not be recapitulated here, the Bank is largely State owned, several of its functions are controlled by Government, it has to obey the directive of the Government, in vital respects, and even apart from its assets, its bodies of management are partly Governmental in composition. Under these circumstances there can be no doubt that the State Bank of India is a 'Public authority' indisputably, it is an 'authority' within the scope of Article 226 of the Constitution.

85. Therefore, we are unable to accept the argument of Mr. Marthandam, that it is not correct to say that the liability to account to shareholders other than the Central Government and Governmental financial institutions would make the State Bank of India to go out of the control of the Central Government.

86. The reason why the State Bank of India has not specifically come to be included under Section 4 (1)(c) of the Shops Act has already been seen and we cannot accept the argument of Mr. A. Ramachandran, learned Counsel, when he contends that the inclusion of Reserve Bank is a point in his favour to hold that in the absence of such specific mention of State Bank of India, the exemption may not apply.

87. Notwithstanding the absence of words like 'instrumentality' or 'agency' under Section 4(1)(c) of the Shops Act, it should be our endeavour to find out the nature of control the Government of India has over the State Bank of India. The composition of the Central Board under Section 19 and the power of the Central Government to appoint Directors and Clauses (a), (b), (ca), (cb), and (d) and (e) are very important. Section 10-A of the Banking Regulation Act deals with the Board of Directors of the Banking Company. The term of office of the Chairman is fixed by the Central Government under Section 20(1) of Act 23 of 1959. In the same section under Sub-section 1-A his services are terminable by Central Government. Under Section 21, six members of the local Board are nominated by Central Government. Section 24 postulates removal of directors by Central Government. Under Section 25, even casual vacancies are to be filled up by the Central Government. The salary of the Chairman under Section 27(2) is determined by the Central Government; likewise the Vice Chairman's salary under Section 29(2). In Chapter VI, Section 35 is important. The various sub-sections clearly postulate that the acquiring of the business of other banks must be only with the sanction of the Central Government. Section 37 talks of creation of reserve fund in the following manner:

Section 37. The State Bank shall establish a Reserve Fund which shall consist of-

(a) the amount held in the Reserve Fund of the Imperial Bank transferred to the State Bank on the appointed day; and

(b) such further sums as may be transferred to it by the State Bank out of its annual net profits before declaring dividend.

Section 40 (1) is yet another important section which is quoted below:

Section 40 (1). The State Bank shall furnish to the Central Government and to the Reserve Bank within three months from the 31st day of December, as on which its books are closed and balanced; its balance sheet together with the profit and loss account and the auditor's report on the working of the State Bank during the period covered by the accounts:

Provided that the Central Government may, after consultation with the Reserve Bank, extend the said period of three months by such further period not exceeding three months, as it may think fit.

88. The power of the Central Government to make rules is contained under Section 49, while under Section 50 it is the Central Board, after consulting with the Reserve Bank and with the previous sanction of the Central Government that gets the power to make regulations. Therefore, there is practically every conceivable control by the Central Government. Consequently, we have to necessarily hold that in view of these provisions, immense or extensive control is exercised by the Central Government.

89. In *Som Prakash v. Union of India*, it is observed thus:

27. If we distil the essence of Article 12 textually and apprehend the expanded meaning of 'State' as interpreted precedentially, we may solve the dilemma as to whether the Bharat Petroleum is but a double of Bharat Sarkar. Let us be clear that the jurisprudence bearing on corporations is not myth but reality. What we mean is that corporate personality is a reality and not an illusion or fictitious construction of the law. It is a legal person. Indeed, 'a legal person' is any subject matter other than a human being to which the law attributes personality. 'This extension, for good and sufficient reasons of the conception of personality...is one of the most noteworthy facts of the legal imagination.' Salmond, *Jurisprudence*, 10th Edn. pp. 324-325. Corporations are one species of legal persons invented by

the law and invested with a variety of attributes so as to achieve certain purposes sanctioned by the law. For those purposes, a corporation or company has a legal existence all its own. The characteristics of corporations, their rights and liabilities, functional autonomy and juristic status, are jurisprudentially recognised as of a distinct entity even where such corporations are but State agencies or instrumentalities. For purposes of the Companies Act, 1956, a Government company has a distinct personality, which cannot be confused with the State. Likewise, a statutory corporation constituted to carry on a commercial or other activity is for many purposes a distinct juristic entity not drowned in the sea of State, although, in substance, its existence may be but a protection of the State. What we wish to emphasise is that merely because a company or other legal person has functional and jural individuality for certain purposes and in certain areas of law, it does not necessarily follow that for the effective enforcement of fundamental rights under our constitutional scheme, we should not scan the real character of that entity; and if it is found to be a mere agent or subrogate of the State, in fact owned by the State in truth controlled by the State and in effect an incarnation of the State, constitutional lawyers must not blink at these facts and frustrate the enforcement of fundamental rights despite the inclusive definition of Article 12 that any authority controlled by the Government of India, is itself State. Law has many dimensions and fundamental facts must govern the applicability of fundamental rights in a given situation.

28. Control by Government of the Corporation is writ large in the Act and in factum of being a Government company. Moreover, here, Section 7 gives to the Government company mentioned in it a statutory recognition, a legislative sanction and a status above a mere Government company. If the entity is no more than a company under the Company Law or Society under the law relating to registered Societies, or Co-operative Societies, you cannot call it an authority. A ration shop run by a co-operative store financed by Government is not an authority, being a mere merchant, not a sharer of State power. 'Authority' in law belongs to the province of power:

'Authority' (in administrative law) is a body having jurisdiction in certain matters of a public nature. The Law Lexicon of British India, P. Ramanatha Iyer, 1940, page

101: Therefore, the liability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties liabilities or other legal relations, either of himself or of other persons'-- Salmond Jurisprudence, 10th Edn. p. 243 must be present ab extra to make a person an 'authority', when the person is 'an agent or instrument of the functions of the State' the power is public. So the search here must be to see whether the Act vests authority, as agent or instrument of the State, to affect the legal relations of oneself or others.

90. Similarly, is one of the recent pronouncements, the Supreme Court had occasion to deal with the question whether Indian Council of Agricultural Research is an authority within the meaning of Article 12 of the Constitution of India. In P.K. Ramachandra Iyer v. Union of India : (1984)ILLJ314SC , it was held after referring to the earlier cases, to which we have made a reference already, at page 547 in paragraphs 10 and 11 as follows:

Apart from the criteria devised by the juridical dicta the very birth and its continued existence over half a century and its present position would leave no one in doubt that ICAR is almost an inseparable adjunct of the Government of India having an outward form of being a Society, it could be styled as a Society set up by the State and, therefore, would be an instrumentality of the State.

ICAR started as a Department of Government of India having an office in the Secretariat even though it was a Society registered under the Societies Registration Act. It was wholly financed by the Government of India. Its budget was voted upon as part of the expenses incurred in the Ministry of Agriculture. Even when its status underwent a change, it was declared as an attached office of the Government of India. The control of the . Government of India permeates through all its activities and it is the body to which the Government of India transferred research Institutes set up by it. In order to make it financially viable, a cess was levied meaning thereby that the taxation power of the State was invoked, and the proceeds of the tax were to be handed over to ICAR for its use. At no stage, the control of the Government of India ever flinched and since its inception it was set up to carry out the recommendations of the Royal Commission on Agriculture. In our opinion, this by itself is sufficient to make it an instrumentality of

the State.

91. Therefore, the statutory personality by itself will not in any manner belittle an establishment being under the control of Government of India. Of course, one distinguishable feature between the State Bank of India and the Reserve Bank of India is the nature of control. No doubt, Section 38 of the State Bank of India may be one of the distinguishing features. However, that very aspect of the matter had been dealt with by Veeraswami, J., as he then was in *Ramaiah v. State Bank of India* : (1963) IILLJ304Mad , which passage we have already extracted. If therefore, the disposal of profits is not the primary object of the establishment of the State Bank of India, but only incidental to the nature of business transaction by the Bank, that may not stand in the way of our conclusion. In fine, we may say, from the Old Testament under stanza Genesis XXVII, 22:

the voice is Jacob's voice, but the hands are the hands of Esau.

In the case of the Nationalised Banks, the voice is Jacob's voice (Central Government) and the hands are the hands of Jacob. However, as regards State Bank of India, it can be said without hesitation that the voice is Jacob's voice (Central Government), but the hands are the hands of Esau (The State Bank of India).

92. In the result, we dismiss the appeals and allow the Writ Petition Nos. 11029 of 1981, 1730 of 1984, 1550 of 1981 and 9563 of 1983. However, having regard to the nice question of law, we do not want to mulct the parties with costs. Therefore, each party to bear their respective costs.

Mohan and Sathiadev, JJ.: After we pronounced our judgment, Mr. Gopinath, learned Counsel prayed for leave to appeal to the Supreme Court. We do not think that this is a fit case in which leave should be granted, because we have merely applied the various rulings of the Supreme Court.