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Court : Chennai

Decided On : Jun-17-1983

Reported in : (1984)2MLJ359

Appellant : S. Bagianathan and ors.

Respondent : The Secretary to the Govt. of Tamil Nadu, Rural Development and Local Administration Dept. and ors.

Judgement :

P.R. Gokulakrishnan, O.C.J.

1. In these writ appeals, the two substantial questions that arise for consideration are (1) Whether a department of a municipality dealing in the distribution of electricity will come under the Industrial Employment (Standing Orders) Act, 1946(Central Act 20 of 1946) and if so, whether the provisions of the said Act are applicable and (2) Whether a department of the Municipality which is within the municipal administration having various other departments like that, can be singled out for the purpose of applying the provisions of the Industrial Employment (Standing Orders) Act, 1946. A Division Bench of this Court in Coimbatore Municipality v. Thiruvenkataswami, I.L.R. (1973)1 Mad. 405 : 87 L.W. 462, has held in respect of the very same municipality which is now litigating the matter, that the District Municipalities Act, being a special law, is applicable and not the

Industrial Employment (Standing Orders) Act, 1946, which is a general law. The view that the Industrial Employment (Standing Orders) Act, 1946 is general law as compared to the District Municipalities Act is no longer good law in view of the categorical decision of the Supreme Court in U.P. State Electricity Board v. Hari Shankar Jain, (1978) 4 S.C.C. 16 : (1979) 1 S.C.R. 355 : (1978) 2 L.L.J. 399 : 1978 L I.C. 1657 : A.I.R. 1979 S.C. 65, to the effect that the Industrial Employment (Standing Orders) Act, 1946 is a special enactment and the District Municipalities Act has to be construed only as a general one. The view of a Division Bench of this Court in Coimbatore Municipality v. Thiruvankataswami, 87 L.W. 462 : I.L.R. (1973) Mad. 405, that the particular department within the municipality cannot attract the benefit under the Industrial Employment (Standing Orders) Act, 1946, has to be decided by a Fuller Bench of this Court in view of the decisions rendered by the Supreme Court in Bhiwandiwalla v. State of Bombay : (1961) IILLJ77SC , Nagpur Corporation v. Its Employees : (1960) ILLJ523SC , and Dr. Devendra M. Surti v. State of Gujarat, : 1969 CriLJ285 . Since we are of the view that the rendered by a Division Bench of this Court in Coimbatore Municipality v. Thiruvankataswami, 87 L.W. 462 : I.L.R. (1973) Mad. 405, requires reconsideration in the light of the decisions of the Supreme Court referred to above, we direct that this matter may be posted before a Fuller Bench on 5-4-1982 for a decision on the question raised.

S. Gopalaratnam, for K. Sarvabhauman and R. Nandakumar, M.P. Subbiah of Row and Reddy, for Petitioners.

Govt. Pleader, for 1st Respondent.

C. Chinnaswamy, for 2nd Respondent.

2. The Order of the Court was pronounced by V. Ratnam, J.: This batch of writ petitions and appeals has been posted for hearing before a Full Bench on a reference made by a Division Bench owing to doubts raised at the Bar about the correctness of the decision of the Division Bench of this Court consisting of Ismail and Palanisami, JJ., in Coimbatore Municipality v. Thiruvankataswami, 87 L.W. 462 : I.L.R. (1973) Mad. 405, in view of the decisions of the Supreme Court in U.P. State Electricity Board v. Hari Shankar Jain (1978) 4 S.C.C. 16 : (1979) 1 S.C.R.

355 : (1978)2 L.L.J. 399 : A.I.R. 1979 S.C. 65; Bhiwandiwala v. State of Bombay : (1961)ILLJ77SC ; Nagpur Corporation v. Its Employees : (1960)ILLJ523SC , Dr. Devendra M. Surti v. State of Gujarat, : 1969 CriLJ285 , etc. The three common questions which arise for consideration in these matters may be set out as follows:

(1) Whether the Electrical undertaking of a Municipality will be an 'Industrial Establishment within the meaning of the Industrial Employment (Standing Orders) Act, 1946(hereinafter referred to as the Standing Orders Act) and if so, whether the provisions of the Standing Orders Act and the Model Standing Orders thereunder, are applicable to the workmen therein?

(2) Whether a department of a Municipality like its own Electrical undertaking, forming part of the entire Municipal Administration, can be subjected to the provisions of the Standing Orders Act, and

(3) Whether the provisions of the Standing Orders Act will prevail over the provisions of the Tamil Nadu District Municipalities Act and the rules framed thereunder in their applicability to such municipal electrical undertakings.

3. The facts may now be broadly, yet, briefly, noticed. The petitioners in these writ petitions and the appellants in the writ appeals, who were employed in the Electrical undertakings of the Coimbatore and Madurai Municipalities (now Corporations) and Thanjavur Municipality, claiming that they were workmen under the Industrial Disputes Act, 1947 and that the municipal Electrical undertakings would be 'industrial establishment' within the meaning of the Standing Orders Act, challenged the validity of the notices issued to them by the Municipalities intimating that they will have to retire on the completion of 55 years. According to them, to the Municipal Electrical undertakings in which they were working, Standing Order 21 of the Model Standing Orders under the Standing Orders Act applied so that they could remain in service in the municipal electrical undertakings till they attained 58 years. This was resisted by the Electrical undertakings on the ground, among others, that the petitioners in the writ petitions and the appellants in the writ appeals are not workmen, that the municipal Electrical undertakings will not be industrial establishments within the meaning of the Standing Orders Act and the provisions of the Standing Orders Act would not

at all apply and therefore, the benefit of the extension of the age of superannuation to 58 from that prescribed viz., 55 cannot be availed of. Reliance was placed by the municipal. Electrical undertakings in support of this upon the decision of the Division Bench in The Coimbatore Municipality represented by its Commissioner, Coimbatore v. K. Thiruvankataswami, 87 L.W. 462 : I.L.R. (1973)1 Mad. 405.

4. Normally, these matters should have been dealt with and disposed of applying the decision in The Coimbatore Municipality represented by its Commissioner, Coimbatore v. K. Thiruvankataswami, 87 L.W. 462 : I.L.R. (1973) Mad. 405. However, before the Division Bench which initially dealt with these matters, counsel submitted that certain vital facts and other relevant considerations touching upon the question whether these municipal electrical undertakings would be 'industrial establishments' for purposes of the applicability of the Standing Orders Act, had not been placed before the Division Bench in The Coimbatore Municipality represented by its Commr., Coimbatore v. K. Thiruvankataswami, 87 L.W. 462 : I.L.R. (1973) Mad. 405 and that those aspects would necessitate a reconsideration of the correctness of that decision. Further, according to learned Counsel certain decisions of the Supreme Court having a material bearing upon the questions that arise for consideration in these matters were not brought to the notice of this Court when the decision The Coimbatore Municipality repled. by its Commr. Coimbatore v. K. Thiruvankataswami, 87 L.W. 462 : I.L.R. (1973) Mad. 405 was rendered. In view of these submissions, the matters were directed to be posted before a Full Bench and that is how they have come up before us.

5. We may now advert to one important circumstance which has a material bearing on the disposal of these matters and it is this. All the petitioners in these writ petitions and the appellants in the writ appeal without exception have not only attained the age of 55 years, but had, during the pendency of these proceedings, also completed 58 years. We would revert to this later.

We now proceed to refer to the relevant provision of the Standing Orders Act. Section 2(e) of the Standing Orders Act.

defines an 'Industrial Establishment' thus:

'Industrial establishment' means

(i) an industrial establishment as defined in Clause (ii) of Section 2 of the Payment of Wages Act, 1936(4 of 1936), or

(ii) a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948(63 of 1948), or

(iii) a railway as defined in Clause (4) of Section 2 of the Indian Railways Act, 1890(9 of 1890), or

(iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;

It would be necessary to notice the definition of 'workman' in Section 2(i) which runs as under:

(i) 'workman' means any person (including an apprentice) employed in any industrial establishment to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person.

(i) who is subject to the Army Act, 1950(46 of 1950), or the Air Force Act, 1950(45 of 1950), or (the Navy Act, 1957(62 of 1957), or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.)

6. Under the Standing Orders Act, provision has been made for the preparation of a draft Standing Order with reference to the matters set out in the schedule to that

Act and for submission of the same for certification to the certifying officer. The certifying officer after considering the same and hearing the representatives of the employees certifies the same. Provision has also been made for an appeal against the orders of the certifying officer.

Section 12A(1) of the Standing Orders Act is as follows:

Notwithstanding anything contained in Sections 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the Standing Orders as finally certified under this Act come into operation under Section 7 in that establishment, the prescribed model Standing Orders shall be deemed to be adopted in that establishment, and the provisions of Section 9, Sub-section (2) of Section 12 and Section 13-A shall apply to such model Standing Orders as they apply to the Standing Orders so certified.

Section 13-B declares that the provisions of the Standing Orders Act will not apply to certain industrial establishments and that reads as under:

Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply).

We are not referring to other provisions of the Standing Orders Act in detail since they are not very material for the purpose of a decision in these cases.

The definition of an 'industrial establishment' in the Standing Orders Act is with reference to definitions contained in other enactments like, the Payment of Wages Act, 1936, Factories Act, 1948, Indian Railways Act, 1890 etc., We are thus thrown back to the definitions in the other enactments referred to earlier. Section 2(ii) of

the Payment of Wages Act, 1936, defines 'industrial establishment' as meaning-

(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

((sic)) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;)

(b) dock, wharf or jetty;

(c) inland vessel, mechanically propelled;

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or manufacture of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;)

Section 2(m) of the Factories Act, 1948 defines a 'factory' as meaning any premises including the precincts thereof-

(i) wherein ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or

(ii) wherein twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, ... but does not include a mine subject to the operation of the Mines Act, 1952(35 of 1952), or

(a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place);

'Manufacturing process' which occurs in the definition of a 'factory' under Section 2(m) of Factories Act, 1948 is defined under Section 2(k) of that Act as meaning any process for...

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breakup, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types of printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;

7. In the light of the aforesaid provisions of the Standing Orders Act and other Act, Kailasam, J., (as he then was) in Thiruvenkataswamy v. The Coimbatore Municipality by its Commissioner, Coimbatore : (1968)ILLJ361Mad , had to consider the question whether the municipal electrical undertaking of the then Coimbatore Municipality would be an 'industrial establishment' within the meaning of the Standing Orders Act. In that case, the petitioner, who was a wireman and who had joined the electrical undertaking of the Coimbatore Municipality, claimed that the establishment would be an 'industrial establishment' and that by virtue of the application of the Standing Orders Act and the Model Standing Orders framed thereunder, he could continue in service till the completion of 58 years. Taking into consideration the circumstance that the Coimbatore Municipality was a bulk consumer, which obtained electrical energy from the State Electricity Board, the learned Judge was of the view that such a municipal Electrical undertaking was an

establishment in which work relating to the generation or relating to transmission and distribution of electricity was carried on and would, therefore, be an 'industrial establishment' within Section 2(ii) of the Payment of Wages Act, 1936 and would also fall within the definition in Clause (e) of Section 2 of the Standing Orders Act. Considering the nature of the municipal electrical undertaking in the light of Section 2(m) of the Factories Act, 1948, it was found that the undertaking had been engaged in the process of transmitting power and as such, it would also fall within the definition of Section 2(m) of the Factories Act read with Section 2(k) so as to attract Clause (e) of Section 2 of the Standing Orders Act. The Standing Orders Act, being a later special enactment, was held by Kailasam, J., (as he then was) to prevail over the provisions of the earlier general Act viz., The District Municipalities and the rules framed thereunder. Dealing with the argument that Section 13-B of the Standing Orders Act operated to exempt the 'industrial establishment' on the ground that the Revised Leave Rules are applicable and that the municipal rules would be rules notified by the appropriate Government for the purpose of exemption under Section 13-B, the learned Judge took the view that the employees of the Coimbatore Municipality were not governed by the Revised Leave Rules and that the municipal rules were not notified for purposes of excluding the applicability of the Standing Orders Act and further that Section 13-B of the Standing Orders Act can be availed of by industrial establishments in respect of which the Government is authorised to frame rules and regulations relating to the conditions of the employment and it cannot govern the relationship in an industrial establishment under private management or in a statutory corporation. Finally, the electrical undertaking of the Coimbatore Municipality was held to be an 'industrial establishment' to which the Standing Orders Act would apply, that the provisions of the District Municipalities Act and the rules framed thereunder and the Section 13-B cannot be availed of for securing an exemption from the operation of the provisions of the Standing Orders Act with reference to the electricity department of the Coimbatore Municipality. The writ petition was, accordingly allowed. However, on appeal by the Municipality in *The Coimbatore Municipality repleaded by the Commr., Coimbatore v. Thiruvankataswami*, 87 L.W. 462 : I.L.R. (1973) Mad. 405, the Division Bench did not agree with the conclusions arrived at by Kailasam, J., (as he then was)

8. On a consideration of the definition of 'Industrial Establishment' as found in the Standing Orders Act and in the Payment of Wages Act, 1936 and the Factories Act, 1948, the Division Bench took the view that the primary requisite for constituting an 'Industrial Establishment' under the Standing Orders Act is a fixed place or site, either open or with a building and that this question was not at all considered in the writ proceeding and therefore, in its absence, the Standing Orders Act cannot be held to be applicable to the Electrical undertaking of the municipality. Construing the words 'generation, transmission and distribution of electricity' occurring in Section 2(ii)(g) of the Payment of Wages Act, 1936, the Division Bench was of the opinion that the use of a comma after the word 'generation' was with a view to avoid the use of the word 'and' between generation and transmission and that therefore, in the absence of the carrying on of all the three processes viz., of generation, transmission and distribution in the municipal electrical undertaking, the requirement of the definition cannot be stated to be satisfied. Dealing with the question whether the electrical undertaking of the Coimbatore Municipality would be a 'factory' within the meaning of Section 2(m) read with Section 2(k)(iii) of the Factories Act, 1948, the Division Bench concluded that there was no finding as to the number of persons working on the premises and that in the absence of such a finding, the premises cannot be said to be a 'factory' within the meaning of Section 2(m) of the Factories Act, 1948 so as to attract the provisions of the Standing Orders Act. Proceeding to consider the question whether the Standing Orders Act will prevail over the provisions of the District Municipalities Act and the rules framed thereunder, the Division Bench was of the view that the municipality cannot itself be an 'industrial establishment' as it can notes the corporate personality of the municipal council under the provisions of the District Municipalities Act and that it is not possible even to hold that some departments of the Municipality would be 'industrial establishments' as the different departments of a municipality were intended only for the convenient performance and discharge of the duties of the municipality and that indefiniteness and uncertainty would result with reference to the age of superannuation, if, one, out of the several departments in a municipality, should be held to be an 'industrial establishment' to which the Standing Orders Act would apply. The provisions of the District Municipalities Act, according to the Division Bench, would constitute

'special law' and the Standing Orders Act would be 'general law' applicable throughout the territory of India in respect of 'Industrial Establishments' coming within its purview. In view of this, the rules framed under Section 74 of the District Municipalities Act fixing the age of retirement as 55 for the employees of municipal council were held to be applicable to the employees of the municipal electrical undertaking also but not the Standing Orders Act or the Model Standing Orders thereunder and the writ appeal was allowed.

9. We may even at this stage notice the decision of the Supreme Court in *The U.P. State Electricity Board and Anr. v. Hari Shanker Jain and Ors.* (1978)4 S.C.C. 16 : (1979)1 S.C.R. 355 : A.I.R. 1979 S.C. 65, as it has a direct bearing on the decision of the third question set out earlier. There, the dispute arose with reference to the age of retirement of two workmen, who were the employees of Messrs. Seth Ram Gopal and Partners, licensees under the Indian Electricity Act, 1910 and which business was purchased and taken over by the U.P. State Electricity Board. Under the certified Standing Orders of Messrs. Seth Ram Gopal and Partners, no age of superannuation for the employees was prescribed and that according to the workmen, would enable them to work as long as they were fit and able to discharge their duties. The U.P. State Electricity Board did not make or get certified any Standing Orders. However, the U.P. Electricity Board made a regulation under Section 79(c) of the Electricity Supply Act, 1948 to the effect that an employee of the Board shall retire on the attainment of the age of 58 years and this was notified on 28-5-1970 under Section 13-B of the Standing Orders Act. Acting on this, the U.P. Electricity Board sought to retire two workmen on their attaining the age of 58 years and this was challenged in writ proceedings, the contention being that the U.P. Electricity Board was incompetent to make a regulation in respect of matters covered by the Standing Orders Act. The writ petition was dismissed but on appeal, the matter was dealt with by a Full Bench which answered the three questions referred to it in the following terms:

(1) The Industrial Employment (Standing Orders) Act, 1946 applies to the industrial establishments of the State Electricity Board,

(2) The Standing Orders framed in an industrial establishment by an electrical undertaking do not cease to be operative on the purchase of the undertaking by the Board or on framing of the regulations under Section 79(c) of the Electricity (Supply) Act, 1948;

(3) Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 applies only to the industrial establishments of the government and to no other establishments.

10. In this view, the appeal was allowed and the notification dated 28-5-1970 was quashed and the U.P. Electricity Board was directed not to enforce the regulation against the two workmen. Before the Supreme Court, among others, one of the points raised was that the Standing Orders Act was an Act specially designed to define and secure reasonable conditions of service for workmen and to secure that end, employers were compelled to draft Standing Orders and get them certified also and would thus be a special Act with reference to the subject matter, while the Electricity Act, on the other hand, was general one for the purpose of rationalising the production and supply of electricity and also for taking measures conducive to electrical developments, and therefore the provisions of the special Act, viz., the Standing Orders Act would prevail over the provisions of the Electricity Supply Act. On an examination of the provisions of the Standing Orders and the Electricity Act and the purposes for which they had been enacted and applying the principle of *generalia speciali bus non derogate*, the Supreme Court held that a general provision should yield to a specific provision, that the Industrial Establishment Standing Orders Act is a special Act dealing with a special subject viz., conditions of service enumerated in the Schedule of Workmen in 'Industrial Establishments', that the provisions of the Electricity Act which is a general one cannot be taken to pro tanto repeal the Standing Orders Act and that the provisions of the Standing Orders Act would prevail over Section 79(c) of the Electricity (Supply) Act in regard to matters to which Standing Orders Act would apply. Dealing with the point based on Section 13-B of the Standing Orders Act to the effect that the provision can be applied only to Industrial Establishments in which the workmen employed could be properly described as Government servants, the Supreme Court did not agree with this and pointed out that the use of the expression 'rules and regulations' in

Section 13-B had come to acquire a special meaning i.e., they are used to describe subordinate legislation made by authorities to whom the statute delegates that function and cannot have any other meaning and that the expression cannot be construed narrowly as to mean Government servants only nor so broadly as to mean workmen employed by whomsoever including private employers, so long as their conditions of service are notified by the Government under Section 13-B. In the course of considering this aspect, the Supreme Court in paragraph 15 of its judgment (at page 73 and 74 of the report) referred to the decisions in *Raman Nambisan v. State Electricity Board* : (1967)ILLJ252Mad , and *Thiruvankataswami v. Coimbatore Municipality* : (1968)ILLJ361Mad . According to the Supreme Court, in the former case, it was held that the mere fact that the Electricity Board had adopted the rules and regulations of the Government of Madras as its transitory rules and regulations did not bring the workmen employed in industrial establishments under the Board within the mischief of Section 13-B of the Industrial Employment (Standing Orders) Act while with reference to the latter case, the Supreme Court stated that it was held therein that rules made by the Government under the District Municipalities Act could not be considered to be rules notified under Section 13-B of the Standing Orders Act merely because the rules were made by the Government and published in the Government Gazette. The Supreme Court also expressed its agreement with the conclusion in both the cases. Referring to the observations of Kailasam, J. (as he then was), in *Thiruvankataswami v. Coimbatore Municipality*, : (1968)ILLJ361Mad , that the Industrial Employment (Standing Orders) Act was a special Act relating exclusively to the service conditions of persons employed in industrial establishments, and, therefore, its provisions prevailed over the provisions of the District Municipalities Act, the Supreme Court expressed its agreement with those observations. However, the Supreme Court expressed its disagreement, with the following observations of Kailasam, J., (as he then was) at page 364 in *Thiruvankataswami v. Coimbatore Municipality* : (1968)ILLJ361Mad :

Section 13-B cannot be availed of for purposes of framing rules to govern the relationships in an industrial establishment under private management or in a statutory corporation. This rule can apply only to industrial establishments in respect of which the Government is authorised to frame rules and regulations

relating to the conditions of employment in industrial establishments.

The Supreme Court further clarified the extent of disagreement by pointing out that it disagreed with the observations of Kailasam, J., (as he then was) extracted above in regard to Industrial Establishments under Statutory Corporations authorised by statute to make rules and regulations and not in regard to those under Statutory Corporations not so authorised nor in regard to those under private management.

Finally, in paragraph 16 of the judgment, the Supreme Court has reiterated that the Standing Orders Act is a special law in regard to matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect, unless, such regulations are either notified by the Government under Section 13-B or certified by the Certifying Officer under Section 5 of the Industrial Employment (Standing Orders) Act.

11. In the light of the decision of the Supreme Court referred to earlier, it will be convenient now to take up question No. 3 set forth at the outset. Earlier, we had seen how Kailasam, J., (as he then was) in considering the question whether the Standing Orders Act would be a special enactment relating exclusively to the service conditions of persons employed in Industrial Establishments and such a special Act, would prevail over the provisions of the District Municipalities Act generally dealing with the administration of municipalities, concluded that the Standing Orders Act would prevail over the provisions of the District Municipalities Act. This view was not accepted by the Division Bench in Coimbatore Municipality by its Commr. Coimbatore v. K. Thiruvengkatahwami 87 L.W. 462 : I.L.R. (1973)1 Mad.(405). In doing so, the Division Bench examined in extenso the contention raised that by virtue of Section 107 of the Government of India Act, 1935 corresponding to Article 254 of the Constitution of India, the provisions contained in the District Municipalities Act, will have to give way to the provisions of the Standing Orders Act and held that the Standing Orders Act and the model Standing Orders thereunder would be a general Central enactment applicable through out the territory of India in respect of 'industrial establishments' coming within its scope and that the rules framed in the exercise of the powers conferred

under Section 74 of the District Municipalities Act would constitute special law and on the application of the principles that special will exclude the general, the rules made by the Government under Section 74 of the District Municipalities Act will prevail over the Standing Orders Act or the Model Standing Orders there-under. This view of the Division Bench does not appear to have been brought to the notice of the Supreme Court at the time when the decision in the U.P. State Electricity Board v. Hari Shankar (1978) 4 S.C.C. 16 : (1979)1 S.C.R. 355 : I.L.R. 1979 S.C. 65, was rendered by it. Even so, the attention of the Supreme Court had been drawn to the decisions of this Court in Raman Nambis an v. State Electricity Board : (1967)ILLJ252Mad and Thiruvankataswami : (1968)ILLJ361Mad , and the Supreme Court while expressing, its agreement with the conclusions in both these cases, had made a pointed and, particular reference to the observations of Kailasam, J.,(as he then was) in Thiruvankataswami v. Coimbatore Municipality : (1968)ILLJ361Mad , and stated at page 74 that the Standing Orders Act was a special act relating exclusively to the service conditions of persons employed in industrial establishments and therefore, its provisions will prevail over the provisions of the District Municipalities Act or the rules framed by the State Government under Section 74. In view of the approval by the Supreme Court of the view expressed by Kailasam, J., (as he then was) with reference to the provisions of the Standing Orders Act, being a special enactment prevailing over the provisions of the District Municipalities Act, the decision contra by the Division Bench in Coimbatore Municipality represented by its Commr. Coimbatore v. Thiruvankataswami, 87 L.W. 462 : I.L.R. (1973) 1 Mad. 405, to the effect that the provisions of the District Municipalities Act or the rules framed in the exercise of the powers conferred under Section 74 of the Act would constitute special law and would exclude the applicability of the Standing Orders Act, which would be in the nature of general law applicable to all industrial establishments through out the territory coming within its scope cannot be sustained.

12. Applying the ratio of the decision of the Supreme Court in the U.P. State Electricity Board and Anr. v. Hari Shankar Jain and Ors. (1978)4 S.C.C. 16 : (1979)1 S.C.R. 355 : A.I.R. 1979 S.C. 65, referred to earlier, we hold on the third question set out at the beginning that the provisions of the Standing Orders Act, if applicable to a municipal undertaking as an 'industrial establishment' defined in the

Standing Orders Act, being in the nature of a special enactment, will prevail over the provisions of the District Municipalities Act and the rules thereunder and to this extent, the decision of the Division Bench in *The Coimbatore Municipality repled. by its Commr., Coimbatore v. Thiruvenkataswamy*, 87 L.W. 462 : I.L.R. (1973)1 Mad. 405, is not correct. We are of the opinion that in the events which have taken place since the filing of this batch of writ petitions and writ appeals, it will be a totally futile and purely academic exercise to proceed to consider and answer questions 1 and 2 set out in the beginning of this judgment. The challenge in the writ petitions as well as the writ appeals by the petitioners and the appellants was against the orders of the concerned municipalities to the effect that all of them should retire on the attainment of the age of 55 years. This was based on the ground that the municipal electrical undertakings will be 'industrial establishments' within the meaning of the Standing Orders Act, 1946 and Model Standing Order No. 21 would apply so that the benefit of a higher age of superannuation at 58 would be available to them. At the time when these writ petitions as well as the writ appeals had been filed, the petitioners in the writ petitions as well as the appellants in the writ appeals had almost completed 55 years of age and since the filing of the writ petitions and the writ appeals, all of them had completed 58 years also. In other words, the petitioners in the writ petitions as well as the appellants in the writ appeals have not only crossed the retirement age of 55 years in accordance with the municipal rules but also the higher age limit of 58 years, if the provisions of the Standing Orders Act were to apply to the municipal electrical undertakings in which they were employed. It is not in dispute that on the completion of 58 years, the petitioners in these writ petitions as well as the appellants in the writ appeals had retired from service. As none of the petitioners in these writ petitions and the appellants in the writ appeals continued to remain in service, as pointed out earlier, it would be an exercise in futility to go into the question whether the municipal electrical undertakings of the erstwhile Coimbatore and Madurai Municipalities and Thanjavur Municipality would be industrial establishments within the meaning of the Standing Orders Act, as even on the assumption that they are so, the petitioners in the writ petitions and the appellants in the writ appeals cannot be granted any relief, as the only relief asked for by them was that they should have the benefit of the higher age of superannuation at

58 instead of 55. That they have already secured. It is also not the case of any of the petitioners in these writ petitions or the appellants in these writ appeals that though as on date they had completed 55 years they had not attained 58 years and therefore, question Nos. 1 and 2 set out earlier would still be relevant and remain alive for consideration. A faint attempt was no doubt made by the learned Counsel for the petitioners in these writ petitions as well as the appellants in the writ appeals that they may be eligible for some higher or better retirement benefits and therefore, question Nos. 1 and 2 should also be considered and decided. We are not inclined to consider those questions merely from the point of view of the possibility of the writ petitioners in these writ petitions and the appellants in the writ appeals securing some better retirement benefits, for, we do not know that they are, as in none of the writ petitions or even in the writ appeals, that question had been raised. To the extent to which the petitioners in the writ petitions and the appellants in the writ appeals wanted the benefit of the higher age of superannuation at 58 years, they have already secured it during the pendency of the writ petitions and writ appeals and therefore, no useful purpose will be served by an academic consideration of the correctness or otherwise of the decision of the Division Bench in *The Coimbatore Municipality, repled. by its Commr., Coimbatore v. Thiruvankataswamy*, 87 L.W. 462 : I.L.R.(1973) Mad. 405, on the other two questions viz., whether the municipal electrical undertakings would be industrial establishments within the meaning of the Standing Orders Act and whether a department of the Municipality like the municipal electrical undertaking can be subjected to the application of the provisions of the Standing Orders Act. In view of this, we are of the opinion that question Nos. 1 and 2 referred to earlier do not require to be considered and answered. Consequently, we dismiss all the writ petitions as well as the writ appeals. There will be, however, no order as to costs.