
(1979) 07 CAL CK 0037
In the Calcutta High Court

Amitava Bhattacharya and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-07-1979

Acts Referred:

COMPANIES ACT, 1956 — Section 227, 617

Constitution of India, 1950 — Article 12, 13, 14, 16, 226

General Insurance Business (Nationalisation) Act, 1972 — Section 10, 11, 12, 13, 14

Penal Code, 1860 (IPC) — Section 21

Citation : (1979) 07 CAL CK 0037

Hon'ble Judges : B.C. Basak, J

Bench : Single Bench

Judgement

B.C. Basak, J.—This application under Article 226 of the Constitution of India is directed against certain actions taken by the respondent No. 3. The New India Assurance Co. Ltd. (hereinafter referred to as "the respondent-company") in respect of recruitment of certain persons

2. The facts of this case, so far as they are relevant for the purpose of disposal of this case, are as follows:

The respondent No. 2, General Insurance Corporation of India, (hereinafter referred to as the respondent-Corporation) was formed as a Government company in accordance with the provisions of the Companies Act pursuant to Section 9 of the General Insurance Business Nationalisation Act, 1972 (hereinafter referred to as ("the said Act")) . The respondent-Corporation was formed for the superintending, controlling and carrying on the business of general insurance. The respondent-company was incorporated under the appropriate Companies Act and before the said Act came into force was carrying on the business of general insurance u/s 4 of the said Act, all the shares in the capital of every Indian Insurance Company stood transferred to and vested in the Central Government. I shall refer to in detail the relevant provisions of the said Act when I examine the question as to whether writ lies against the respondent-

company. For the purpose of recruitment of clerical and subordinate staffs, the procedure to be followed in the General Insurance Industry has been laid down (hereinafter referred to as the procedure). The relevant provisions thereof are set out herein-below.

III-Pre-recruitment Test

Para 17. "The candidates for recruitment all posts other than those of Subordinate Staff shall have to appear for a pre-recruitment test to be conducted by the Corporation/Company at selected centres and shall not be considered for appointment if they fail to reach the requisite standard. The test shall cost of one paper of 3 hours" duration. The maximum number of marks shall be 100. The paper will be divided into 3 Section, namely, English Arithmetic and General Knowledge. In the Section on English, the candidates may be asked to write an essay, may be given a few sentences in English for making corrections, wherever necessary, and may be tested generally in the knowledge of English Grammar. 50 marks shall be allotted for the Section on English . In the Section of Arithmetic, the candidates shall be expected to do simple arithmetical calculations, and shall be allotted a maximum of 30 marks The Section on General Knowledge shall be aimed at testing the candidate"s general intelligence and/or his knowledge of important current events The maximum marks allotted for this Section shall be 20"

18. The qualifying marks at the test shall be 50% in the aggregate. In the case of candidates belonging to Scheduled Castes/Scheduled Tribes, persons from East Pakistan who have migrated to India on or after 1-1-1964 and ex-servicemen, the percentage shall be 45.

20. Separate lists of candidates belonging to the categories of:

- (a) Scheduled castes (reservation of 20% vacancies vide paragraph above).
- (b) Scheduled Tribes (reservation of 10% vacancies vide paragraph 10 above)
- (c) Ex-servicemen (reservation of vacancies vide paragraph 10 above)
- and (d) other candidates;

who have been successful at the pre-recruitment test shall be prepared in descending order of marks Secured at the test. Out of these, the top-most candidates equal in number to 3 times the number of relevant vacancies to be filled in each region and in each category, shall be called for oral interview.

IV-Interviews

The Appointing Authority shall constitute committees to interview the eligible candidates for their final selection. The constitution of the committees shall be as indicated below:

Cadre to which the appointments are to Constitution of the Committee, be made. (a) Senior Assistants/Stenographers Deputy Manager and two other

officers not below the rank of Administrative Officers (b) Other staff in the clerical cadre. Assistant Manager and two other officers not below the rank of Administrative Officers, (c) Subordinate staff Administrative Officer and two other officers not below the rank of Assistant Administrative Officers NOTE : At least one of the Committee members on each Committee shall be from the Personnel Department.

23. In selecting the candidates for recruitment, the Committee concerned shall take into account the qualifications of the candidate, his performance at the pre recruitment test and at the interview, and shall allot marks out of a maximum of 50. A maximum of 25 marks shall be allotted for the candidate's performance at the pre-recruitment test and a maximum of 25 marks shall be allotted for his/her performance at the interview. Each candidate shall be asked to state in writing at the time of interview, two places of posting in order of preference. Separate lists for the various categories of candidates specified in paragraph 20 above shall be prepared centre-wise according to the performance of the candidate, and in order of merit. All the candidates selected as fit for recruitment will be included in the lists. The vacancies at each centre shall be filled up strictly in order of merit the reserved vacancies for a particular category being filled up from the list of candidates belonging to that category, and the other vacancies being filled up from the list of other candidates. From the remaining candidates, separate "reserve" lists according to the various categories of candidates specified in paragraph 20 above shall be prepared centre-wise. The "reserve" lists shall consists of about 50 % of the number of announced vacancies. The "reserve" lists shall be utilised for recruiting, if necessary, candidates during the period up to the following pre-recruitment test. If for any reason all the vacancies reserved for a particular category of candidates referred to under paragraph 20 above cannot be filled up during a particular year, from the candidates belonging to that category, the number of unfilled vacancies shall be carried over as reserved vacancies for the following year. If such vacancies cannot be filled in for 3 consecutive years the Board of the Corporation/Company may consider final Dereservation of the concerned vacancies.

3. The petitioners before me are some of the candidates who appeared in the said pre recruitment tests but could not succeed. Accordingly they are not eligible candidates within the meaning of the said procedure and they are not or will not be called for interview under para 22. The grievance of the petitioner is that the provisions of the said paragraph 17 of the procedure have not been complied with by the respondent-company. It is stated that the said paragraph 17 of the procedure requires pre-recruitment tests before the question of interview under paragraph 22 arises. It is stated that no candidate can be treated as an eligible candidate unless he had been successful in such pre-recruitment test. The admitted position is that in respect of 45 persons this procedure has not been followed. The allegation is that in spite of the same these 45 persons are going to be called for interview and that they have been treated as eligible candidates for final selection. Under the said procedure only the

eligible candidates may be interviewed by the Committees, constituted by the appointing authority, for final selection. Not having appeared and passed in the pre-recruitment written Test, none of these persons can be treated as an eligible candidate.

4. On the basis of such allegations, this writ petition was moved on the 10th May, 1979 wherein a rule nisi was issued by Pyne, J. and ad interim order was also passed for a limited period which was modified subsequently. The application for extension of the interim order came up before me for hearing, when I gave directions for an early hearing the Rule itself. This I did in order to avoid further inconvenience and harassment to all concerned. Accordingly this matter has come up before me for final disposal.

5. On behalf of the respondents, Mr. Sankar Ghosh, learned advocate appearing for respondents Nos.2 and 3, i.e., the respondent-Corporation and the respondent-company, Mr. Bhola Nath Sen and Mr. Ajit Roy Mukherjee, appearing for the other respondents raised some preliminary objections as to the maintainability of this Rule. It was submitted that no writ lies in the facts of this case. It firstly submitted that this writ petition is not maintainable in view of the fact that it is mainly directed against some action of the respondent-company which was and remains to be a company incorporated under the Companies Act. The submission on behalf of the respondents was that by virtue of the said Act, on the appointed date, all the shares in the capital of every Indian Insurance Co. which included the respondent-company stood transferred to and vested in the Central Government free from all trusts, liabilities and encumbrances affecting them. Out of the said shares, the Central Government has to transfer ten shares of every such company to such persons as may be specified in the Notification to enable such Indian Insurance Companies to function as a Government company. Soon after the commencement of the said Act, the Central Government formed the respondent-corporation, which is a Government company, in accordance with the provisions of the Companies Act as required by Section 9 of the said Act for the purpose of supervising, controlling and carrying on the business of general insurance. By virtue of Section 10 of the said Act, all the shares in the capital of every Indian Insurance Co, which stand transferred to and vested in the Central Government by virtue of Section 4 (with the exception of shares transferred to any person under Sub-section (2) of that Section) immediately after such vesting stood transferred to and vested in the respondents-corporation. It was submitted on behalf of the respondents that this makes it clear that the respondent-company under the Companies Act as it was before the said Act came into force. Under these circumstances the respondent-company was not a "State" or an "authority" within the meaning of Article 12 and Article 226 of the Constitution of India. Accordingly, no writ lies against the respondent-company. A great deal of submission was made by Mr. Ghosh on this point the sum and substance of which was that the following test is to be applied to find out whether it was a "State" or "Authority" against whom a writ may lie. According to him there are three tests all of which must be satisfied. Firstly, it must be a statutory authority ; Secondly,

there must be complete control by the Central Government and thirdly, either the rule-making power by the authority concerned must be binding on third parties or the governing power of the State must be located in the authority concerned. Mr. Ghosh has submitted that in this case it is not a statutory authority. The respondent-company is not incorporated by any statute but it remains a company under the Companies Act. It was submitted that this and this alone concludes the matter. In any event, it was submitted that the other tests were also not satisfied. There is no complete control by the Central Government. There is neither any rule-making power conferred on the respondent-company which may be binding nor there is any governing power of the State located in the respondent-company. In this connection, my attention has been drawn to various provisions of the said Act and various decisions of the Supreme Court and other High Courts. The main reliance placed was to the decisions in the case of Sabhajit Tewary Vs. Union of India (UOI) and Others, , Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and a very recent decision of the Supreme Court in the case of Ramana Dayaram Sethi v. International Airport Authority of India, decided on the 4th May, 1979 in Civil Appeal No. 895 of 1978. Mr. Ghosh has also relied on a judgment of the Punjab and Haryana High Court which is reported in M.L. Nohria Vs. General Insurance Corporation and Others, , in the case of M.L. Nohria v. General Insurance Corporation of India and Ors. Other decisions relied upon on behalf of the respondents in this connection are the following Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , the views of Shah, J., in State Trading Corporation of India v. C.T.O. AIR (1963) S.C. 1811 ; Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., , Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, 6. The Second preliminary objection of Mr. Ghosh was to the effect that no writ lies in the present case inasmuch as a mandamus would lie only for the enforcement of a legal right. Here the breach, if any, was merely of an administrative direction. The procedure in question was framed by the respondent-Corporation and the Board of Directors of the respondent-company has approved the same and made it their own procedure. There is merely a policy matter. This has got no statutory force. Accordingly, the same cannot be enforced in this proceeding. In support of the same reliance has been placed on the following decisions : Ramesh Prasad Singh Vs. State of Bihar and Others, and The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, .

7. The next preliminary point by way of maintainability of this application, as raised on behalf of the respondents is to the following effect. It has been pointed out that these three petitioners had appeared in the pre-recruitment test as provided into the "procedure" but that they have failed. They are not aggrieved persons. They have no legal right. They have no legal right to challenge the appointment of any other person.

8. I should point out that on the merits it has been admitted on behalf of the respondents that in the present case paragraph 17 of the said procedure has not been followed in respect of these 45 persons. As and by way of justification of such action it has been submitted on behalf of the respondents that these persons were sometime or other in the past recruited as temporary employee for a period not exceeding 120 days. Before such appointments such temporary recruits, examinations were held. These examinations were of similar standard. Accordingly, it was decided not to make the said pre recruitment test under paragraph 17 as a condition of eligibility in respect of these 45 persons as they have already appeared in a similar test.

9. Mr. Somenath Chatterjee appearing in support of this Rule has made the following submissions. In respect of the first preliminary point, i.e., whether the respondent-company is such as authority against whom the writ lies Mr. Chatterjee has made the following submissions. He has drawn my attention to the various provisions of the said Act. He has particularly drawn my attention to the provisions of the Act which provides for merger of the Indian Insurance Companies. He has stated that pursuant to such provisions Central Government has framed scheme by virtue of which there is now four units including the respondent-company carrying on General Insurance business in India. He has submitted that having regard to the provisions of the said Act and the scheme in the present case, the respondent-company must be treated as such an authority against whom a writ lies. In this context great reliance has been placed by Mr. Chatterjee to the I.A.A.I. case (supra) recently decided by the Supreme Court. On the question of the enforceability of the procedure. Mr. Chatterjee has submitted that even if the said procedure has to statutory force, writ would lie against the same on two grounds, He has submitted that if it is an authority within the meaning of Article 12 of the Constitution then Articles 14 and 16 of the Constitution of India would be applicable which prevents discrimination. In the alternative he has submitted that whether Articles 14 and 16 are applicable in the facts and circumstances of this case or not, there is a duty cast on all the authorities to act reasonably and not arbitrarily in respect of their duties and even in the case of entering into contracts or in the administration of the estates and properties of the authority concerned. In this connection a great reliance has been placed by Mr. Chatterjee on the said Supreme Court decision in I.A.A.I. case (supra). In respect of the third preliminary point Mr. Chatterjee has submitted that these three petitioners are entitled to maintain this writ petition in view of the fact that they are challenging the selection of any one who has not appeared or passed in the selection test as provided by paragraph 17 of the procedure. According to Mr. Chatterjee because the petitioners have not passed the selection test, they are not being called for interview and not treated as eligible candidates. These 45 persons stand on the same footing. In spite of the same, the 45 persons have been exempted from appearing in the selection test for the purpose of this permanent appointment. Therefore, they stand on the same footing as the petitioner and accordingly the petitioners are entitled to

complain against the same and maintain this writ petition.

10. Before I consider the merits of the respective contentions of the parties I think it necessary to set out the relevant provisions of the Act:

Section 2. It is hereby declare that this Act is for giving effect to the policy of the State towards securing the principles specified in Clause (c) of Article 39 of the Constitution.

Section 3. In this act, unless the context otherwise requires--

(a) "acquiring company" means any Indian Insurance company and, where a scheme has been framed involving the merger of one Indian Insurance company in another or the amalgamation of two or more such companies, means the Indian Insurance company in which any other company has been merged or the company which has been formed as a result of the amalgamation;

(b) "appointed day" means such day, not being a day later than the 2nd day of January, 1973, as the Central Government may, by notification, appoint;

(c) "Companies Act" means the Companies Act, 1956.

(d) "Corporation" means the General Insurance Corporation of India formed u/s 9;

(g) "general insurance business" means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them but does not include capital redemption business and annuity certain business;

(h) "Government company" means a Government company as declined in Section 617 of the Companies Act;

(i) "Indian insurance company" means an existing insurer having a share capital who is a company within the meaning of the Companies Act.

(p) words and expression used in this Act but not defined herein and defined in the Insurance Act, shall have the meanings respectively assigned to them in that Act;

(q) words and expressions used in this Act but not defined herein or in the Insurance Act and defined in the Companies Act, shall have the meanings respectively assigned to them in the Companies Act;

Section 4. (1) On the appointed day all the shares in the capital of every Indian Insurance Company shall, by virtue of this Act, stand transferred to and vested in the Central Government free of all trusts, liabilities and encumbrances affecting them.

(2) Out of the shares, so transferred and vested the Central Government shall, immediately thereafter, by notification, provide for the transfer of not less than ten shares of every such company to such persons as may be specified in the

notification to enable the Indian Insurance company to function as a Government company;

(3) Every notification notice under Sub-section (2) shall specify the names and description of the persons to whom the shares transferred and the particulars the shares which are transferred to each such person;

(4) A copy of every notification made under Sub-section (2) shall, as soon as may be after it is made, be sent by the Central Government to the concerned Indian Insurance company who shall, on receipt of such copy, and notwithstanding anything contained in the Companies Act or in its articles of association, forthwith rectify its register of members by including therein the persons mentioned in the notification as the holders of the shares specified therein;

(5) For the removal of doubts it is hereby declared that the transfer and vesting of shares effected under Sub-section (1) shall not be deemed to affect any right of the Indian Insurance Company subsisting immediately before the appointed day against any shareholder to recover from him any sum of money on the ground that that share holder has not paid or credited to the insurer the whole or any part of the value of the shares held by him or on any other other ground whatsoever.

Section 9. (1) As soon as may be after the commencement of this Act, the Central Government shall form a Government company in accordance with the provisions of the Companies Act to be known as the General Insurance Corporation of India for the purpose of superintending controlling and carrying on the business of general insurance.

(2) The authorised capital of the Corporation shall be rupees seventy-five crores, divided into seventy-five lakhs fully paid up shares of one hundred rupees each, out of which rupees five crores shall be the initial subscribed capital of initial subscribed capital of the Corporation.

(3) Notwithstanding anything contained in the Companies Act, 1956 it shall not be necessary to add the word " Limited" as the last word of the name of the Corporation.

Section 10. All the shares in the capital of every Indian Insurance company which stand transferred to and vested in the Central Government by virtue of Section 4 (with the exception of the shares transferred to a person under Sub-section (2) of that Section) shall, immediately after such vesting, stand transferred to and vested in the Corporation and every Indian insurance company shall forthwith give effect to such transfer of shares and rectify its register of members by including therein the Corporation as the holder of such shares.

Section 11, (1) For the transfer of the shares of each Indian insurance company to and vesting in Central Government u/s 4, there shall be paid by the Central Government to the Corporation for distribution to the share holders of each such

company, the amount specified against such company in the corresponding entry under column (B) of Part A of the Schedule;

(2) For the transfer to, and vesting in, the Central Government u/s 5, of the undertaking of each existing insurer, who is not an Indian insurance company, there shall be paid by the Central Government to the Corporation, for payment to each such existing insurer, the amount specified against such insurer in responding entry under column (3) of Part B of the Schedule;

Section 12, (1) The total amount paid by the Central Government u/s 11 shall be treated as additional contribution to the subscribed capital of the Corporation and such additional subscribed capital shall stand transferred to, and vested in, the Central Government.

(2) The Corporation shall distribute the amount paid to it u/s 11 to the share holders of each Indian insurance company and to each existing insurer, who is not an Indian insurance company, in accordance with their rights and interests, and, if there is any doubt or dispute as to the right, or extent of the right, of any person to receive the whole or any part or such amount, refer such doubt or dispute to the Central Government for determination and thereafter act in accordance with the determination made by that Government.

(3) Save as otherwise provided in Sub-section (2) the amount referred to in Section 11 shall be given in accordance with the provisions of Section 13, Section 14 or Section 15, as the case may be.

Section 16, (1) If the Central Government is of opinion that for the more efficient carrying on or general insurance business it is necessary so to do, it may, by notification, frame one or more schemes providing for all "or any of the .following matters:

(a) the merger in one Indian insurance company of any other Indian insurance company, or the formation of a new company by the amalgamation of two or more Indian insurance companies;

(b) the transfer to and vesting in the acquiring company of the undertaking (including all its business properties, assets and liabilities) of any Indian insurance company which ceases to exist by reason of the scheme;

(c) the constitution, and registered office and the capital structure of the acquiring company and the issue and allotment of shares,

(d) the constitution of a board of management by whatever name called for the management of the acquiring company.

(e) alteration of the memorandum and articles of association of the acquiring company for such purpose as may be necessary to give effect to the scheme;

(f) the continuance in the acquiring company of the services of all officers and other employees of the Indian insurance company which has ceased to exist by

reason of the scheme, on the same terms and conditions which they were getting, or, as the case may be by which they were governed immediately before the commencement of the scheme;

(g) the rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees wherever necessary;

(h) the transfer to the acquiring company of the provident, superannuation, welfare and other fund, relating to the officers and other employees of the Indian insurance company which has ceased to exist by reason of the scheme;

(i) the continuance by or against the acquiring company of legal proceedings pending by or against any Indian insurance company which ceased to exist by reason of the scheme, and the initiation of such legal proceedings, civil or criminal, as the Indian insurance company might have initiated if it had not ceased to exist;

(1) such incidental, consequential and supplemental matters as are necessary to give full effect to the scheme;

(2) In framing schemes under Sub-section (1) the object of the Central Government shall be to ensure that ultimately there are only four companies (excluding the Corporation) in existence and that they are so situate as to render their combined services effective in all parts of India.

(3) Where a scheme under Sub-section (1) provides for the transfer of any property or liabilities, then by virtue of the scheme, the property shall stand transferred to and vested in, and those liabilities shall be transferred to and become the liabilities of, the acquiring company.

(4) If the rationalisation or revision of any pay scale or other terms and conditions of service under any scheme is not acceptable to any officer or other employee, the acquiring company may terminate his employment by giving him compensation equivalent to three months remuneration, unless the contract of service with such employee provides for a shorter notice of termination;

Explanation--The compensation payable to an officer or other employee under this Sub-section shall be in addition to, and shall not affect, any person, gratuity, provident fund or other benefit to which the employee may be entitled under his contract of service.

(5) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employees of an Indian insurance company to the acquiring company shall not entitle any such officer or other employee to any compensation under that Act or other law, and so such claim shall be entertained by any Court, Tribunal or other authority.

(6) The Central Government may, by notification, and to, amend or vary any scheme framed under this section.

(7) The provisions of this section and of any scheme framed under it shall have effect notwithstanding anything to the contrary contained in any other law or an agreement, award or other instrument for the time being in force.

Section 17. A copy of every scheme and every amendment thereto framed u/s 16 shall be laid, as soon as may be after it is made, before each house of Parliament.

Section 18. (1) The function of the Corporation shall include:

(a) the carrying on or any part of the general insurance business if it thinks it desirable to do so.

(b) aiding, assisting and advising the acquiring companies in matter of setting up of standards of conduct and sound practice in general insurance business and in the matter of rendering efficient service to holders of policies of general insurance;

(c) advising the acquiring companies in the matter of controlling their expenses including the payment of commission and other expenses;

(d) advising the acquiring companies in the matter of the investment of their funds;

(e) issuing directions to acquiring companies in relation to the conduct of general insurance business;

(2) In issuing any directions under Sub-section (1) the Corporation shall keep in mind the desirability of encouraging compensation amongst the acquiring companies as far as possible in order to render their services more efficient.

Section 19. (1) Subject to the rules, if any, made by the Central Government in this behalf and to its memorandum and articles of association, it shall be the duty of every acquiring company to carry on general insurance business

(2) Each acquiring company shall so function under the Act as to secure that general insurance business is developed to the best advantage of the community.

(3) In the discharge of any of the functions, each acquiring company shall act so far as may be on business principles and where any directions have been issued by the Corporation shall be guided by such directions

(4) For the removal of doubts it is hereby declared that the Corporation and any acquiring company may, subject to the rules, made by the Central Government in this behalf, enter into such contracts of reinsurance or reinsurance treaties as it may think fit for the protection of its interests.

Section 20. (1) After making provisions for had and doubtful debts, depreciation in assets, provident, superannuation, welfare and other funds, debts due to Government and all other matters for which provision is necessary under any law or which are usually provided for by insurance companies, every acquiring

company shall distribute the balance of profit as dividends

(2) Any profit made by the Corporation by way of dividends or otherwise shall be dealt with by it in such manner as may be prescribed.

Section 21. (1) Notwithstanding anything contained in the Companies Act, or in the memorandum and articles of association of any Indian insurance company, on and from the appointed day and until a new board of directors of the Indian Insurance company is duly constituted, the management of the company shall continue to vest in the custodian in charge, of the management of the undertaking of that company immediately before the appointed day by virtue of the provisions contained in the General Insurance (Emergency Provisions) Act, 1971, and the custodian shall be entitled, subject to such directions as the Central Government may issue in his behalf, to exercise all the powers and do all acts and things as may be exercised or done by the company or by its board of directors.

(2) Nothing contained in Sub-section (1) shall be deemed to prevent the Central Government from appointing any other person to take charge of the management of the undertaking any Indian insurance company during the period referred to in that if for any reason it becomes necessary so to do, and any person so appointed may exercise all the powers and do all acts and things which a Corporation may exercise or do under Sub-section (1).

(3) The custodian referred to in Sub-section (1) and the persons appointed under Sub-section (2) shall be entitled to such salaries and other allowances as the Central Government may specify in this behalf and shall hold office during the pleasure of the Central Government.

Section 22. The Corporation may at any time transfer any officer or employee from an acquiring company of the Corporation to any other acquiring company or the Corporation, as the case may be, and the officer or employee so transferred, shall continue to have the same terms and conditions of service as were applicable to him, immediately before such transfer.

Section 23. The Corporation and every acquiring company shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may give.

Section 24. (1) Except to the extent expressly provided in this Act, on and from the appointed day, the Corporation and the acquiring companies shall have the exclusive privilege of carrying on general insurance business in India.

(2) Subject to the provision of Section 36, any certificate of registration granted under the Insurance Act to any insurer other than an insurer referred to in Sub-section(1) shall, on and from the appointed day, cease to have effect;

Provided that nothing in this Sub-section shall apply to the carrying on by the Life Insurance Corporation of life insurance business and capital redemption and

annuity certain business.

Section 25. (1) No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Central Government.

(2) If any person contravenes any provision of Sub-section (1) he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both.

Section 31. Every officer or other employee of the Corporation or of an acquiring company shall be deemed to be a public servant for the purpose of Chapter IX of the Indian Penal Code.

Section 32. Every officer of the Central Government and every officer or other employee of the Corporation and of any acquiring company shall be indemnified by the Central Government or the Corporation or the acquiring company, as the case may be, against all losses and expenses incurred by him, in or in relation to the discharge of his duties under this Act except such as have been caused by his own wilful act or default.

Section 33. No provision of law relating to the winding up of companies shall apply to the Corporation or to an acquiring company, and neither the Corporation nor any such company shall be placed in liquidation save by order of the Central Government and in such manner as it may direct.

Section 38. No suit, prosecution or other legal proceeding shall lie against any officer of the Central Government or officer or other employee of the Corporation or of the acquiring company for anything which is in good faith done or intended to be done under this Act.

Section 39. (1) The Central Government may, by notification make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for--

(a) the manner in which the profits, if any, and other moneys received by the Corporation may be dealt with:

(b) the conditions, if any, subject to which the Corporation and the acquiring companies shall carry on general insurance business;

(c) the terms and conditions subject to which any reinsurance contracts or treaties may be entered into;

(d) the form and manner in which any notice or application may be given or made to the Central Government;

(e) the reports which may be called for by the Central Government from the

Corporation and the acquiring companies;

(f) any other matter which is required to be, or may be prescribed.

(3) Every rule made under this section and every notification issued u/s 35 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session of the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

11. I ought to point out that pursuant to Section 16(1) of the said Act the Central Government has framed schemes whereby four transferee companies have been set up and the present respondent-company is one of them. The scheme framed in respect of the present respondent-company provides as follows:

1. Short title and (1) This scheme may be called the New India Assurance Company limited (Merger) Scheme, 1973.

(2) It shall come into force on the 1st day of January, 1974. 2. Definitions : (i) in this scheme, unless the context otherwise requires,

(a) "Act" means the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972)

(b) "merged company" means a company specified in the First Schedule;

(c) "Schedule" means schedule appended to this scheme.

(d) "Specified day" means the 1st day of January, 1974.

(e) "transferee company" means the New India Assurance Company Limited;

(2) Words and expressions used in this Scheme and not defined herein or in the Act but defined in the Insurance Act shall have the meanings respectively assigned to them in the Insurance Act.

(3) Words and expressions used in this Scheme and not defined herein or in the Act or in the Insurance Act but defined in the Companies Act shall have the meanings respectively assigned to them in the Companies Act.

3. Transfer of Undertakings

(1) On and from the specified day, the undertaking of every merged company shall stand transferred to and vested in the transferee company.

(2) The undertaking of every merged company shall be deemed to include all

assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, capital and reserve funds, investments and all other rights and interest in arising out of such property, as were immediately before the specified day in the ownership, possession power, or control of such merged company, whether within or without India, and all books of accounts, registers, records and all other documents of whatever nature relating thereto : and shall be deemed to include all borrowings, liabilities and obligations of whatever kind than subsisting of the merged company.

(3) Notwithstanding the dissolution of a merged company, the auditor of the merged company holding office immediately before such dissolution, shall continue in office, examine the accounts of the merged company for the year ending 31st December, 1973 and submit a report of such examination, in accordance with the provisions of Section 227 of the Companies Act, to the transferee company.

(4) On receipt of the audited accounts of all the merged companies, the transferee company shall prepare, for the year ending 31st December, 1973, one consolidated set of accounts, namely, Revenue Accounts, Profit and loss Accounts, Profit and Loss Appropriation Account, and Balance sheet, as required by Section 11 of the Insurance Act, in respect of all general insurance business transacted by the transferee company and the merged companies during the year.

(6) All items of miscellaneous expenditure shown in the accounts of a merged company and not written off or adjusted and all debit balances of the Profit and Loss Account of the merged company, as on the 31st day of December, 1972 which have been carried forward in the balance sheet of the merged company shall be debited to the profit and loss account prepared under Sub-section (5) and shall be a charge on, and shall be set off against, the profits of the transferee company as shown in the said consolidated accounts.

4. Effect of transfer

(1) All deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the specified day and to which any merged company is a party or which are in favour of such merged company shall be of as full force and effect against or in favour of the transferee company and may be enforced or acted upon as fully and effectually as if in the place of such merged company the transferee company had been a party thereto or as if they had been issued in its favour.

(2) If on the specified day and suit, appeal or other proceeding of whatever nature is pending by or against any such merged company, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the merged company under paragraph 3 or of anything contained in this scheme, but the suit, appeal or proceeding may be continued, prosecuted or

enforced by or against the transferee company.

5. Transfer of service of existing employees

Every whole time officer or other employee of any merged company who was employed by such company immediately before the specified day shall on and from that day become an officer or other employee, as the case may be, of the transferee company and shall hold his office or service under the transferee company on the same terms and conditions and with the same rights as to pension, gratuity and other matters as would have been admissible to him if there had been no such transfer as referred to in paragraph 3 and shall continue to do so, unless and until his employment in the transferee company is terminated or until his remuneration, terms and conditions are duly altered by the transferee company or by any other scheme framed under the Act.

8. Dissolution of merged companies

(1) A merged company shall, on the specified day, stand dissolved without winding up.

(2) The transferee company shall, as soon as may be practicable after the specified day, give an intimation to the Registrar of companies of the State in which, the registered office of merged company is situated as to the dissolution of the merged company and on receipt of such intimation, the Registrar of companies shall make the necessary entries in his records and strike, the name of the dissolved company off the Register of companies.

(3) Notwithstanding the dissolution of a merged company the Board of Directors of the transferee company shall, as soon as may be, after the specified day, prepare, get audited and lay before the transferee company at its general meeting a balance sheet and profit and loss account of the merged company in respect of any calendar year preceding the calendar year 1973 for which the balance sheet and profit and loss account have not been laid before the merged company and such account or accounts shall be dealt with in the same manner as the merged company would have dealt with such account or accounts had not the merged company been so dissolved.

9. Cancellation of existing shares

The shares of the transferee company and of the merged companies in force immediately before the specified day, shall, on and from that day, stand cancelled and all rights and obligations there under stand extinguished without prejudice to the rights, conferred by Sub-section (5) of Section 4 of the Act.

10. Authorised capital

On and from the specified day, the transferee company shall issue new shares in lieu of the shares which stand cancelled under paragraph 9 and for this purpose the authorised capital of the transferred company shall be rupees twenty crores divided into:

- (a) three crores equity shares of five rupees each and
- (b) five lakh preference shares of one hundred rupees each.

11. Issue and allotment of shares

(1) Out of the authorised capital, the transferee company shall issue seventy-seven lakh, one thousand, two hundred and sixty eighty equity shares, which shall "be deemed to be fully paid-up.

(2) Out of the issued capital, there shall be allotted to every person, registered immediately before the specified day on the register of members of either the transferee company or of any one or more of the merged companies, shares in the transferee company issued under Sub-paragraph (I), and such allotment shall be made in proportion to the total amount paid up on the shares held by such person, immediately before the specified day, in the transferee company or in one or more of the merged companies.

12. Reduction or further increase of share capital not to be made without the consent of the Central Government

Notwithstanding anything contained in the Memorandum of Association and the Articles of Association of the transferee company, on or after the specified day, neither the share capital of the transferee company shall be reduced, nor any further capital shall be issued by the transferee company, except with the prior consent of the Central Government.

13. Alteration of Memorandum of Association and Articles of Association

The Memorandum of Association and the Articles of Association of the transferee company shall on and from the specified day, stand altered in the manner and to the extent set out in the second schedule.

14. Directors not to retire by rotation

The provisions of the Companies Act, in so far as they relate to the retirement of directors by rotation, shall not apply in respect of the Directors of the transferee company.

15. Special provisions

In the event of there being any inconsistency between any provision of the Articles of Association of the transferee company as has not been altered by paragraph 13 and any provision of the Articles as altered by the said paragraph or of this scheme, the Article as so altered, or this scheme as the case may be, shall prevail.

12. So far as the first preliminary point is concerned strictly speaking I need only look into the decisions of the Supreme Court in the cases of Sabhajit Tewari (supra) Sukhdev Singh (supra) and recent I.A.A.I, cases (supra). In Sabhajit Tewari's case (supra) in a very short judgment delivered on behalf of the Court,

A.N. Ray, C.J., as he then was, held that Council of Scientific and Industrial Research was a society registered under the Societies Registration Act within the meaning of Article 12. In Sukhdev Singh's case (supra) the Supreme Court considered in detail various cases on this point. In a much more comprehensive judgment Mr. Justice Bhagwati, in the recent I.A.A.I. case (supra) has considered in detail all these judgments including the judgment in Sabhajit Tewari and Sukhdev Singh's case. I shall deal with these three cases in detail and in my opinion it is not strictly necessary to deal with any other case on this point separately inasmuch as all the other decisions have been dealt with therein. In the case of Sabhajit Tewari the Supreme Court was considering the case of Council of Scientific and Industrial Research (herein after referred to as C.S.I.R.), In that case in the writ petition filed by the petitioner, who was a Junior Stenographer of C.S.I.R., a challenge was made against two letters which were alleged to be discriminatory and violative of Article 14 of the Constitution. The Supreme Court pointed out that in order to entitle the petitioner to impeach the circular on the ground of infraction of Articles 14 and 16, the petitioner had to establish that the C.S.I.R. was an authority within the meaning of Article 12 of the Constitution. On behalf of the petitioner it was submitted that the Council though a society registered under the Societies Registration Act, was really an agency of the Government. This contention was rejected by the Court and it was held by A.N. Ray, C.J., (as his Lordship then was), as follows;

Extracting the features as aforesaid, it was contended that these would indicate that the Council of the Scientific and Industrial Research was really an agency of the Government. This contention is unsound. The Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act, The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and cooperation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing, institutions for scientific study of problem affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the council towards the development of industries in the country are carried out in a responsible manner.

In this connection the Court referred to the following decisions The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, . Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., .

13. In the case of Sukhdev Singh v. Bhagatram in short, the question was whether the three statutory corporations, namely, Oil and Natural Gas Commission, Industrial Finance Corporation and the Life Insurance Corporation

are "authorities" within the meaning of Article 12, Delivering the judgment on behalf of himself, Chandrachud, J. and Gupta, J., the Chief Justice (as he then was) examined in detail the provisions of Oil and Natural Gas Commission Act, 1959, the Life Insurance Corporation Act, 1956 and the Industrial Finance Corporation Act, 1948. In ascertaining the correct test His Lordship referred to various decisions including the following : G.J. Fernandez Vs. State of Mysore and Others, , S.R. Tewari Vs. District Board Agra and Another, , Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others, .

14. After examination of the various provisions of the Oil and Natural Gas Commission Act, 1959 it was held as follows:

All these provisions indicate at each stage that the creation, composition of membership, the functions and powers, the financial powers, the audit of accounts, the returns, the 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. (Paragraph 44)

15. In respect of the Life Insurance Act, after referring to the relevant provisions of the same, His Lordship held as follows:

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. (Paragraph 50)

In respect of the Industrial Finance Corporation, after referring to the various provisions of the same. His Lordship held as follows:

These provisions of Industrial Corporation Act show that the Corporation was in effect managed and controlled by the Central Government. (para 59.)

Accordingly His Lordship held as follows in respect of these three Corporations

The Oil and Natural Gas Commission is owned by the Government. It is a statutory body and not a company. The Commission has the exclusive privilege of extracting petroleum. The management is by the Government. It can be dissolved only by the Government. (para 60)

The Life Insurance Corporation is owned by the Government, The Life Insurance business is nationalised and vested in the Corporation. No other insurer can carry on life insurance business.

The management is by the Government. The dissolution can be only by the Government. (para 61).

The Industrial Finance Corporation is under the complete control and management of the Central Government. Citizens cannot be share-holders. Certain specified institutions like scheduled Banks, Insurance Companies,

Investment Trusts and Co-operative Banks may apply for the shares. The Central Government may acquire shares held by share-holders other than the Development Bank. After such acquisition the Government may direct that the entire undertaking of the Corporation shall be vested in the Development Bank. The Corporation cannot be dissolved except by the Government. (paragraph 62).

His Lordship then pointed out that in the background of the provisions of the three Acts under consideration, the question arises as to whether these Corporations can be described to be authorities within the meaning of Article 12 of the Constitution. Ultimately it was held by His Lordship as follows:

The Oil and Natural Gas Commission Act confers power of entry on employees of the Commission upon any land or premises for the purposes of lawfully carrying out works by the Commission. the members and employees of the Commission are public servant within the meaning of Section 21 of the Indian Penal Code. The Commission enjoys protection of action taken under the Act. (para 64).

The Life Insurance Act provides that if any person lawfully withholds or fails to deliver to the Corporation any property which has been transferred to and vested in the Corporation or wilfully applies them to purposes other than those expressed or authorised by the Act, he shall on the complaint of the Corporation be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand or with both. The Corporation also enjoys protection of action taken under the Act. (para 65)

The Industrial Finance Corporation Act states that whoever in any bill of lading, warehouse receipt or other instrument given to the Corporation whereby security is given to the Corporation for accommodation granted by it wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both. The Corporation enjoys protection of action taken under the Act. A company incorporated under the Indian Companies Act does not enjoy these privileges (para 66)

For the foregoing reasons, we hold that rules and regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation have the force of law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. By way of abundant caution we state that these employees are not servants of the Union or the State. These statutory bodies are "authorities" within the meaning of Article 12 of the Constitution. (para 67)

16. Though agreeing with the conclusion of the Chief Justice, Mathew, J., delivered a separate judgment. Referring to the decision of the Rajasthan Electricity Board's case (supra) Bhagwati, J., observed as follows:

In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, this Court

had occasion to consider the question whether the Rajasthan Electricity Board was an authority within the meaning of the expression "other authorities" in Article 12 of the Constitution. Bhargava, J., delivering the judgment for the majority pointed out that the expression "other authorities" in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law. The learned Judge also said that if any body of persons has authority to issue directions, the disobedience of which would be punishable as a criminal offence, that would be an indication that that authority is "State". Justice Shah who delivered a separate judgment agreeing with the conclusion reached by the majority preferred to adopt a slightly different meaning to the words "other authorities". He said that authorities, constitutional or statutory, would fall within the expression "State" as defined in Article 12 only if they are invested with sovereign power of the State, namely, the power to make rules or regulations which have the force of law. (para 70)

The test propounded by the majority is satisfied so far as the Oil and Natural Gas Commission Act (hereinafter referred to as "the Act") provides for issuing binding directions to owners of land and premises not to prevent employees of the Commission from entering upon their property if the Commission so directs. In other word as Section 25 authorises the Commission to issue binding directions to third parties not to prevent the employees of the Commission from entering into their land and as disobedience of such directions is punishable under the relevant provision of the Indian Penal Code since these employees are deemed to be public servants u/s 21 of the Indian Penal Code by virtue of Section 27 of the Act, the Commission is an "authority" within the meaning of the expression "other authorities" in Article 12. (para 77)

Though this would be sufficient to make the Commission a "State" according to the decision of this Court in the Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, there is a larger question which has a direct bearing so far as the other two Corporations are concerned, viz., whether despite the fact that there are no provisions for issuing binding directions to third parties the disobedience of which would entail penal consequence, the Corporations set up under statutes to carry on business of public importance or which is fundamental to the life of the people can be considered as "State" within the meaning of Article 12. (para 78)

In this connection Mathew, J., observed as follows:

The concept of State has undergone drastic changes in recent years. Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation. (para 80)

If we clearly grasp the character of the State as a social agent, understanding it rationally as a form of service and not mystically as an ultimate power, we shall differ only in respect of the limits of its ability to render service. " (see Mac Iyer, "The Modern State", 183).

To some people State is essentially a class-structure, "an organization of one class dominating over the other classes " ; others regard it as a organisation that transcends all classes and stands for the whole community. They regard it as a power system. Some view it entirely as a legal structure, either in the old Austinian sense which made it a relationship of governors and governed or, in the language of modern jurisprudence, as a community "organized for action under legal rules." Some regard it as no more than a mutual insurance society, others as the very texture of all our life. Some class the State as a great " corporation " and the others consider it as indistinguishable from society itself. (para 81)

Part IV of the Constitution gives a picture of the services which the State is expected to undertake and render for the welfare of the people. Article 29B provides that the Executive power of the Union and State extends to the carrying on of any business or trade. As I said, the question for consideration is whether a public corporation set up under a special statute to carry on a business or service which Parliament thinks necessary to be carried on in the interest of the nation is an agency or instrumentality of the State and would be subject to the limitation expressed in Article 13(2) of the Constitution. A State is an abstract entity. It can only act through the instrumentality or agency or natural or juridical persons Therefore, there is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State. (para 82)

17. After referring to various treatises on this subject and various decisions of U.S. Supreme Court, His Lordship observed as follows:

Does any amount of State held, however inconsequential, make an act something more than an individual Act ? Suppose, a privately owned and managed operation receives direct financial aid from the State, is an act of such an agency an act of State ? It would be difficult to give a categorical answer to this question. Any operation or purpose of value to the public may be encouraged by appropriation of public money and the resulting publicly supported operation can be characterized as a State operation. But such a rule would seem to go to the extreme. There seems to be no formula which would provide the correct division of cases of this type into neat categories of State action and private action. Some clue, however, to the considerations which might impel the Court in one direction or the other may be obtained from an examination of the cases in this area. The decisions of the State Courts in U.S.A. seem to establish that a private agency, if supported by public money for its operation would be " State". But in all these cases, it has been found that there was an element of control exercised by the State. Therefore, it may be stated generally, that State financial aid alone does not render the institution receiving such aid a State agency. Financial aid plus some additional factor might lead to a different conclusion. A mere finding of State control also is not determinative of the question, since a State has considerable measure of control under its police power over all types of business operations. It is not possible to assume that the monopoly of law authority of a State under which people carry on ordinary business, or their

private affairs or own property, each enjoying quality in terms of legal capacity would be extraordinary assistance. 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. (para 96)

Another factor which might be considered is whether the operation is an important public function. The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion (para 97)

The State may aid a private operation in various ways other than by direct financial assistance. It may give the organization the power of eminent domain, it may grant tax exemptions, or it may give it a monopolistic status for certain purpose. All these are relevant in making an assessment whether the operation is private or saviours of State action. (para 98)

Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function performed Government agencies, (see the decisions in [1926] 273 U.S. 536 & *Nixon v. Condon* 1931] 286 U.S. 73. Activities which are too fundamental to the society are by definition too important not to be considered Government function. This demands the delineation of a theory which requires Government to provide all persons with all fundamental of life and the definitions of aspects which are fundamental. The State today has an affirmative duty of seeing that all essentials of life are made available to all persons. The task of the State today is to make possible the achievements of a good life both by removing of obstacles in the path of such movements and in assisting individual in realizing his ideal of self perfection. Assuming that indispensable functions are Government functions, the problem remains of defining the line between fundamentals and non-fundamentals. The analogy of the doctrine of "business affected with a public interest" immediately comes to mind. The difficulty here is well stated by Justice Holmes in *Tyson and Brother v. Banton* [1926] 273 U.S. 418 at p. 447, dealing with the constitutionality of a New York statute which limited the fees charged by theatre ticket brokers.

But if we are to yield to fashionable conventions, it seems to me that theatres are as much devoted to public use as anything well can be. To many people- the superfluous is the necessary, and it seems to me that Government does not go beyond its sphere in attempting to make life livable for them. (para 102)

The difficulty of separating vital government functions from non-government functions which plagued the Courts a rational one? The contrast is between

governmental activities which are private and private activities which are governmental. Without the adoption of a radical laissez faire philosophy and the definition of State functions as they were current in the days of Harbert Spencer it is impossible to sort out proper from improper functions Besides the so-called traditional functions, the modern State operates a multitude of public enterprises, Mr. Justice Holmes said, the Constitution does not enact Herbert Spencer's social statistics This applies equally to the definition of state function for legal purposes (para 103)

It has taken English and American courts many years to concede that the exercise of an industrial or commercial activity on behalf of the State does not deprive such activity of its " governmental" character. But a great many anomalies in common law remain, in particular as regards the immunities and privileges of the Crown in such matters, immunity from the binding force of statute, debt priority, freedom from taxes and other public charges The recent English cases appear, at long last, to move towards the abandonment of the totally antiquated notions of "proper" functions of government. (para 107)

18. In the light of these decisions Mathew, J., proceeded to examine whether the Life Insurance Corporation and the Industrial Finance Corporation would come within the ambit of " State " and held as follows:

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 importance and that it enjoys a monopoly in the business. I would draw the same conclusions from the relevant provisions of the Industrial Finance 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 Corporation be not State actions? (para 109)

The ultimate question which is relevant for our purpose is whether such a Corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public. In other words, the question is for whose benefit was the Corporation carrying on business ? When it is seen from the

provisions of that Act that on liquidation of the Corporation, its assets should be divided among the shareholders, namely, the Central and State Governments and others, if any, the implication is clear that the benefit of the accumulated income would go to the Central and State Governments. Nobody will deny that an agent has a legal personality different from that of the principal. The fact that the agent is subject to the direction of the principal does not mean that he has no legal personality of his own. Likewise, merely because a Corporation has legal personality of its own, it does not follow that the Corporation cannot be an agent or instrumentality of the State, if it is subject to control of Government in all important matters of policy. Nobody, there might be some distinction between the nature of control exercised by principal over agent and the control exercised by Government over public Corporation. That, I think is only a distinction in degree. The crux of the matter is that public Corporation is a new type of institution which has sprung from the new social and economic functions of Government and that it, therefore, does not neatly fit into old legal categories. Instead of forcing it into them, the latter should be adapted to the needs of changing times and conditions. (para 111)

19. Allegiriswamy, J., delivered a dissenting judgment. I need not refer to the same.

19A. The latest decision of the Supreme Court is in the case of I.A.A.I, (supra) wherein Bhagwati, J. delivered the judgment of the Court. His Lordship considered all the previous decisions of the Supreme Court including the decisions in Sabhajit Tewari and Sukhdev Singh's case. This decision deals with the question involved very thoroughly and I intend to refer to the same very extensively. It is necessary to set out the facts of this case for the proper appreciation of the various questions considered in the judgment. I shall set out the facts as would appear from the judgment. On or about 3rd January, 1977, a notice inviting tender for putting up and running a second class restaurant and two snack bars at the International Airport at Bombay was issued by the 1st respondent which is a corporate body constituted under the International Airport Authority Act 43 of 1971. The notice stated in the clearest terms in paragraph (1) that sealed tenders in the prescribed form are hereby invited from Registered 2nd class Hoteliers having at least 5 years' experience for putting up and running a 2nd class restaurant and two snack bars at this Airport for a period of 3 years. The latest point of time upto which the tenders could be submitted to the 1st respondent was stipulated in paragraph 7 of the notice to be 12 p.m. on 25th January, 1977 and it was provided that the tenders would be opened on the same date at 12.30 hours. Paragraph (8) of the notice made it clear that " the acceptance of the tender will rest with the Airport Director who does not bind himself to accept any tender and reserves to himself the right to reject all or any of the tenders received without assigning any reasons therefore. " There were six tenders received by the 1st respondent in response to the notice and one of them was from the 4th respondents offering a licence fee of Rs.6,666.66 per month ,and the other were from Cafe Mahim, central catering service, one A.S.

Irani, Cafe Seaside and Cafe Excelsior offering progressively decreasing licence fee very much lower than that offered by the 4th respondents. The tenders were opened in the office of the Airport Director at 12.30 p.m. on 25th January, 1977 and at that time the 4th respondents were represented by their sale proprietor Kumaria, A.S. Irani was present on behalf of himself Cafe Mahim, Cafe Seaside and Cafe Excelsior and there was one representative of Central Catering Service. The tender of Cafe Mahim, Central Catering service, Cafe Seaside and Cafe Excelsior were not complete since they were not accompanied by the respective income tax certificates, affidavits of immovable property and solvency certificates, as required by Clause (9) of the terms and conditions of the tender form. The tender of A.S. Irani was also not complete as it was not accompanied by an affidavit of immovable property held by him and solvency certificates. The only tender which was complete and fully complied with the terms and conditions of the tender form was that of the 4th respondents and the offer contained in that tender was also the highest amongst all the tenders. It was pointed out that the 4th respondents had experience only of running canteens and not restaurants and that they did not satisfy the description of " registered 2nd class Hotelier having at least 5 years experience " as set out in paragraph (1) of the notice inviting teveis. By a letter dated 19th April, 1977 the 1st respondent accepted the tender of the 4th respondents on the terms and conditions set out in that letter. The 4th respondents accepted these terms and conditions by their letter dated 23rd April, 1977 and deposited with the 1st respondent by way of security a sum of Rs.39,999.96 in the form of fixed Deposit Receipts in favour of the 1st respondent and paid to the 1st respondent a sum of Rs.6,666.66 representing licence fee for one month and other amounts representing water, electricity and conservancy charges. The 4th respondents thereafter executed and handed over to the 1st respondent an agreement in the form attached to the tender on 1st May, 1977. But the 1st respondent could not hand over possession of the requisite sites to the 4th respondents, since A.S. Irani did not deliver possession of these sites to the 1st respondent. There were some Court proceedings thereafter.

20. Meanwhile one A.S. Irani who owned Cafe Excelsior filed Suit No. 6544 of 1977 in the City Civil Court, Bombay against the respondents challenging the decision of the 1st respondent to accept the tender of the 4th respondents. There were some proceedings therein. Thereafter the 1st respondent handed over possession of two sites to the 4th respondents and the 4th respondents proceeded to set up snack bars on the two sites and started business of catering at the two snack bars, These two sites handed over to the 4th respondents were different from the sites occupied by A.S. Irani, because A.S. Irani refused to vacate the sites in his occupation. So far as the site for the restaurant was concerned, the 1st respondent could not hand over the possession of it to the 4th respondents presumably because there was no other appropriate site available other than the one occupied by A.S. Irani. Since A.S. Irani refused to hand over possession of the sites occupied by him to the 1st respondent, even though his

contract had come to an end, and continued to carry on the business of running the restaurant and the snack bars on these sites, the 1st respondent was constrained to file suit No. 8032 of 1977 against A.S. Irani in the City Civil Court at Bombay and in that suit, an injunction was obtained by the 1st respondent.

21. The main contention urged on behalf of the appellant before the Supreme Court was that in paragraph (1) of the notice inviting tenders the 1st respondent had stipulated a condition of eligibility by providing that a person submitting a tender must be a "registered IInd class hotelier having at least 5 years experience." It was submitted that this was condition of eligibility to be satisfied by every person submitting a tender and if in case of any person this condition was not satisfied, his tender was ineligible for being considered. The 1st respondent, (that is, the International Airport Authority of India) being a State within the meaning of Article 12 of the Constitution or in any event a public authority, was bound to give effect to the condition of eligibility set up by it and was not entitled to depart from it at its own sweet will without rational justification. The 4th respondents had experience of catering only in canteens and did not have 5 years" experience of running a IInd class hotel or restaurant and hence they did not satisfy the condition of eligibility and yet the 1st respondent accepted the tender submitted by them. This was clearly in violation of the standard or norm of eligibility set up by the 1st respondent and of the 1st respondent in accepting the tender of the 4th respondents was clearly invalid. Such a departure from the standard or norm of eligibility had the effect of denying equal opportunity to the appellant and others of submitting their tenders. It was stated that this action was violative of equality clause. This contention on behalf of the appellant was sought to be met by a three fold argument on behalf of the 1st and the 4th respondents. The first submission was that grading was given by the Bombay City Municipal Corporation only to hotels or restaurants and not persons running them and hence there can be a 2nd grade hotel or restaurant but not a 2nd grade hotelier and that the requirement in paragraph (1) of the notice that a tenderer must be a registered 2nd grade hotelier was, therefore, a meaningless requirement and it could not be regarded laying down any condition of eligibility. The second argument was that para (1) of the notice setting out the condition of eligibility had no statutory force nor was it issued under any administrative rules and, therefore, even if there was any departure from the standard or norm of eligibility set out in that paragraph it was not justiciable and did not furnish any cause of action of the appellant. It was submitted that it was competent to the 1st respondent to give the contract to any one it thought fit and it was not bound by the standard or norm of eligibility set out in paragraph (1) of the notice. The third branch of argument on behalf of the respondents 1 and 4 was that the writ petition of the appellant was liable to be rejected in the exercise of its discretion by the Court. Since the appellant had no real interest but was merely a nominee of A.S. Irani who had been putting up one person after another to start litigation with a view to preventing the award of the contract to the 4th respondents.

21 A. On the merits of the case Bhagwati, J., found that paragraph 1 of the notice described the condition of eligibility. It was to be satisfied by every person. On the merits he found that the respondent No, 4 was not a registered 2nd class hotelier. He also found that the said expression could not be treated as meaningless. He found that this was a condition of eligibility and if, therefore, a person submitting a tender did not have at least 5 years' experience of running a 2nd class hotel, he was not eligible to submit the tender.

22. It was suggested on behalf of the 1st and 4th respondents that there was nothing wrong in the 1st respondent giving the contract to the 4th respondents since it was competent to the 1st respondent to reject all the tenders received by it and to negotiate directly with the 4th respondents for giving them the contract and it made no difference that instead of following this procedure the 1st respondent accepted the tender of the 4th respondents. This contention was rejected. Bhagwati, J., pointed out that though the 1st respondent was not bound to accept any tender but the 1st respondent did not reject the tenders outright and enter into direct negotiations with the 4th respondents for awarding the contract. It was, therefore, not possible to justify, the action of the 1st respondent on the ground that the 1st respondent could have achieved the same result rejecting all the tenders and entering into direct negotiations with the 4th respondents.

23. Thereafter the Supreme Court took up the question of locus stand of the appellant to maintain the writ petition I shall refer to the same later. On the question of enforceability of the standard and norm the Supreme Court referred to the various decisions. I shall refer to the same in connection with the next preliminary objection.

24. Then the question arose whether the writ lie against I.A.A.I. or whether it was a State or other authority within the meaning of Articles 12 and 226 of the Constitution of India. In this connection Bhagwati, J., pointed out that the Government which represents the executive authority of the State may act through the instrumentality or agency of natural persons or it may employ instrumentality or agency of juridical persons to carry out its functions. In this connection Bhagwati, J., referred to various decisions. In this context it was observed as follows:

It was in pursuance of the policy envisaged in this and subsequently resolutions on Industrial Policy that Corporation were created by Government for getting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its services, personnel. But the instrumentality or agency of the Corporations was resorted to in these cases having regard to the nature of the task to be performed. The Corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government

acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of Corporation should equally be subject to the same limitations. But the question is how to determine whether a Corporation is acting as instrumentality or agency of Government. It is a question not entirely free from difficulty.

25. A Corporation may be created in one or 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 Government, But ordinarily where a Corporation is established by statute, it is autonomous in its working, subject only to a provision, of the time made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy 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, essentially 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 unwell inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of Corporation into those which are instrumentalities or agencies of Government and those which are not.

26. In this context it was observed that if extensive and unusual financial assistance is given and the purpose of the Government is giving such assistance coincides with the 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 inference that the Corporation is an instrumentality or agency of the Government. In this context it was observed as follows:

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 where financial assistance is not so extensive, it may not be itself, without anything more, render the Corporation as instrumentality or agency of Government, for there are many private institutions which are in receipt of financial assistance from the State and merely on that account, they cannot be classified as State agencies. Equally a mere finding of some control by the State would not be determinative of the question, since a State has considerable measure of control under this policy power over all types of business operation. But a finding of State financial support plus an unusually degree of control over the management and policies might lead out to characterise in operation as State action " Vide Sukhdev v. Bhagatram (supra). So also the existence of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, 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 Corporations ties to the State. Vide the observations of Douglas, J. in Jackson v. Metropolitan Edison Co. 419 U.S. 345 : 42 L.ed. 2nd 477).

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 must yield to a conception of State action where public functions are being performed. Vide Arthur S. Millar : "The Constitutional Law of the" Security State (10 Stanford Law Review 62 at 664). It was pointed out by Douglas, J., in Evans v. Newton 382 U.S. 296 : SIL ed. 2nd 373), that "when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State". Of course, with the growth of the welfare State, it is very difficult to define what functions are governmental and what are not, because, as pointed out by Villner, L.J. in Pfizer v. Ministry of Health, [1964] 1 Ch. 614, there has been since mid-Victorian times, "a revolution in political thought and totally different conception prevails today as to what is and what is not within the functions of Government. Douglas, J., also observed to the same effect in New York v. United States 326 U.S. 572" State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise of conducted for profit. CF. Helvering v. Gerhardt. 304 U.S. 405 . A State may deem it as essential to its economy that

it own and operate a rail road, a mill, or an irrigation system as it does to own and operate bridges, street lights, or a sewage disposal plant. What might have been viewed in an earlier day as an improvident or even dangerous extension of State activities may today be deemed indispensable. It may be noted that besides the so called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. 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. This is precisely what was pointed out by Mathew, J., in *Sukdev v. Bhagatram* (supra) where the learned Judge said that institutions engaged in matters of high public interest or performing public functions are by virtue of the functions performed by Government agencies. Activities which are too fundamental to the society are by definition too important, not to be considered Government functions.

On the question of the distinction between governmental and non-governmental functions, particularly in a social welfare State Bhagwati, J., stated as follows:

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 social welfare State where the *laissez-faire* is an outmoded concept and Herbert Spencer's social states has no place. The contrast is rather between governmental activities which are private and private activities which are governmental (Mathew, J., *Sukdev v. Bhagatram* (supra) at P. 652). But the public nature of the function, if impregnated with governmental character or tied or entwined with Government 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 this inference". Bhagwati, J., thereafter summarised as follows:

It will be thus seen that there are several factors which may have to be considered in determining whether a Corporation is an agency or instrumentality of Government. We have referred to some of these factors and they may be summarised as under : Whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extraordinary, whether there is any control of the management and policies of the Corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions closely related to governmental functions. This particularistic of relevant factors is however not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks growing complexities of managements and administration and the necessity of continuing adjustment in relations between* the Corporation and Government

coaling for flexibility, adaptability and innovative skills it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is governmental instrumentality or agency. Moreover, even amongst these factors which we have described now the single factor will yield a satisfactory answer to the question and the court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. The dispositive question in any State action case, pointed out by Douglas, J. in *Jackson v. Metropolitan Edison Company* (supra) is not whether any single fact or relationship presents a sufficient degree of State involvement, but rather than the aggregate of all relevant factors compels a finding of state responsibility.

It is not enough to examine seriatim each of the factors upon which a Corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding of that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling.

Thereafter, Bhagwati. J, observed as follows:

Now this rule, following as it does from Article 14 applies to every state action and since, "State" is defined in Article 12 include not only the Government of India and the Government of each of the States, but also all local or other authorities within the territory of India or under the control of the Government of India. It must apply to action of "other authorities" and they must be held subject to the same constitutional limitation as the Government. But the question arises what are the other authorities contemplated by Article 12 which fall within the definition of "State"?.

27. Referring to the Rajasthan State Electricity Board decision (supra) Bhagwati J. observed that the ratio of this decision was that a constitutional or statutory authority would be within the meaning of the expression "other authorities" if it has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequence or it has the sovereign power to make rules and regulations having the force of law. It was pointed out by Bhagwati, J., that this test was followed by Ray, C.J., in *Sukdev Singh's* case. It was pointed out by Bhagwati, J., that Mathew J., however, in the same case (that is Rajasthan State Electricity Board case, propounded a broader test, namely, whether statutory Corporation or other body or authority, claimed to fall within the definition of "State" is an instrumentality or agency of the Government. If it is, it would fall within the meaning of the expression "other authorities", and would be "State". While accepting the test laid down in Rajasthan case as followed by Ray, C.J., in *Sukdev Singh's* case, Bhagwati J. stated that he would prefer to adopt the test of governmental instrumentality or agency as one more test and perhaps a more satisfactory one for determining whether a statutory Corporation, body or other authority falls within the

definition of "State". He held that if statutory Corporation, body or other authority is an instrumentality or agency of Government, it would be "an authority" and, therefore, "State" within the meaning of that expression in Article 12.

28. Bhagwati J., then referred to the decisions in *Paraga Tool Corporation v. State of Bihar* and explained what is meant by a Corporation being an instrumentality or agency of the Government. In this context he observed as follows:

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 in respect of the decisions *S.L. Aggarwal v. General Manager, Hindustan Steel Limited* (supra) Bagwati, J., remarked that decision had no relevance point at issue.

29. In respect of the decision in *Sabujit Tewari's* case (supra) it was pointed out that there was no discussion in that case as to what are the features which must be present before a Corporation can be registered as an authority within the meaning of Article 12. It was further pointed out that this decision does lay down any principle or test for the purpose of determining when a Corporation can be said to be an authority.

30. In the light of these discussions Bhagwati, J. examined the provisions of the relevant Act, i.e., the International Airport Authority of India Act, 1971 for the purpose of determining whether the International Airport Authority of India can be said to be an authority falling within the definition of "State". After careful examination of the relevant provisions of the Act in question he held that every discussed in his judgment was satisfied in the case of International Airport Authority of India and that it falls within the definition of "State" both on narrow view taken by the majority in *Sukdev Singh v. Bhagatram* (supra) as also on the broader view of Mathew, J., adopted by the Court in *I.A.A.I* case.

31. This is the latest decision of the Supreme Court and the law laid down therein, after consideration of all the earlier decisions on this point, is binding on me. I shall have to examine whether applying the test laid down by the Supreme Court in the *I.A.A.I* case the respondent-company herein amounts to a "State" or authority within the meaning of the Articles 12 and 226 of the Constitution of India. As pointed out by Bhagwati, J., the binding nature of the order of the authority in question is not the only text. The broader view is whether such an authority is an instrumentality or agency of the Government. I have specified the relevant provisions of the Act and the Scheme. From these following things

appear. This is an Act "to provide for acquisition and transfer of shares of Indian Insurance Companies and undertakings of other existing insurers in order to serve better the needs of the economy by securing development of general insurance business in the best interests of the community and to ensure that the operation of the economic system does not result in the concentration of wealth to the common detriment, for the regulation and control of such business and for matters connected therewith or incidental thereto". Section 2 contains the declaration that this Act is for giving effect to the policy of the State towards securing the principles specified in Clause (c) of Article 39 of the Constitution. The explanation to this section makes it clear that the "State" in this section has the same meaning as in Article 12 of the Constitution. Article 39(c) as contained in Part IV of the Constitution lays down the directive principles of the State Policy. Articles 36 and 39(c) provides as follows:

Article 36--Definition--In this part, unless the context otherwise requires, the "State" has the same meaning as in part III.

Article 39(c)--The State shall, in particular, direct its policy towards securing that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment.

It is clear from the same that certain authorities have been set up under the said act as their arm of the company for the purpose of developing the socio-economic policy of the Republic of India which is a Social Welfare State. In my opinion Section 2 of this act read with Article 39(c) makes it clear that these authorities are being set up for the purpose of giving effect to the social welfare plan of the Republic of India. This has not been done in pursuance of or any ordinary private activities but to serve the needs of economy by securing development of general insurance business in the best interests of the community. Accordingly in my opinion, the functions entrusted to these companies are governmental functions particularly having regard to the aims and objects of the Republic as reflected in the Constitution. The operation of the respondent-company is an important public function. This is an important aspect relevant to the question as to whether the respondent-company is an instrumentality or agency of the Government.

32. Let us now examine the other provisions. u/s 4 of the Act all the capital shares of every Indian Insurance company shall stand transferred to and vested in the Central Government free of all trusts, liabilities and encumbrances. Thereafter the respondent-Corporation was formed u/s 9 of the Act for the purpose of superintending, controlling and carrying on the business of general insurance and all the shares in the capital to every Indian Insurance Company which stood transferred to and vested in the Central Government (excepting to the extent specified in Sub-section (2) of Section 4 stood transferred to and vested in the Corporation, u/s 10 of the Act. u/s 11 the amount of compensation is to be paid by the Central Government. This is a huge amount as would appear from the schedule to the said Act.

33. The most important provision is Section 16 which, inter alia, provides for merger of the Indian Insurance Companies. Such scheme is to be framed by the Central Government for the merger in one Indian Insurance company or any other Indian Insurance company or for the formation of a new company by the amalgamation of two or more Indian Insurance companies. The power of the Central Government has been specified in the said section which I have quoted above, and which is very extensive in nature. This includes the constitution,, name and registered office and the capital structure of the acquiring company and the issue and allotment of shares, the constitution of Board of Management, by whatever name called for the management of the acquiring company the alteration of memorandum and articles of association of the acquiring company and many other things as specified in Section 16(1). Sub-section (2) provides that ultimately there will be four companies in existence apart from the respondent-corporation. As a matter of fact only four such companies now exist as a result of such merger u/s 16 and one of them is to present respondent-company. In the case of the respondent-company this was so done by the notification dated 31st of December, 1973 which came into force by the 1st of January, 1974. I have referred to in detail the extensive nature of the said scheme. This includes change in authorised capital, issue and allotment of shares and alteration of memorandum of Association. Regarding the appointment of Directors, articles have been changed and this provides that the appointment of the director must be with the previous approval of the Central Government. Terms of office of Director may be extended with the previous approval of the Central Government. Vacancy may be filled up with the previous approval of the Central Government. A director may be removed from office with the previous approval of the Government by the Chairman, of General Insurance Corporation. The condition of service or the remuneration payable shall be revised from time to time by the General Insurance Corporation with the previous approval of the Central Government. The Central Government may by notification frame scheme under this Section. Sub-section (6) of Section 16 authorises the Central Government to add to amend or vary any such scheme. Sub-section (7) of Section 16 makes it clear that the provisions of the said section and of any scheme framed under it, shall have effect notwithstanding anything to the contrary contained in any other law or any agreement, award or other instrument of the time being in force, Therefore, the effect of the same is that by virtue of scheme making power, the Central Government effectively controls the management of the company and it may give a go-bye to all or any of the provisions otherwise governing a company registered under the Companies Act. As a matter of fact these acquiring companies, including the respondent-company remains a company registered under the Companies Act in form only but in substance they are companies governed by the scheme framed by the Central Government which may dispense with all or any provisions of any act including the companies Act.

34. Section 17 requires that a copy of every scheme and every amendment

thereto framed u/s 16 shall be laid as soon as may be after it is made, before each house of Parliament.

35. u/s 19(1) it shall be the duty of the respondent-company to carry on general insurance business but this is made subject to the Rules made by the Central Government. u/s 19(3) the respondent-company shall be bound by the direction issued by the respondent-Corporation. u/s 19(4) the power to enter into contract of reinsurance and reinsurance treatise maybe incorporated on, inter alia, the respondent-company subject to the rules made by the Central Government.

36. u/s 21. notwithstanding anything contained in the companies Act, or in the memorandum and articles of association of any Indian Insurance company, on and from the appointed day and until a new board of directors of the Indian Insurance company is duly constituted, the management of the company shall continue to vest in the custodian. By Sub-section (2) of Section 21 nothing contained in Sub-section(1) shall be deemed to prevent the Central Government from appointing any other person to take charge of the management of the undertakings

37. u/s 23 the respondent-company is to be guided by the directors given by the Central Government in regard to matters of policy involving public interest.

38. u/s 24 the Corporation and the acquiring companies have exclusive privilege for the carrying on General Insurance Business in India. Thereafter between these companies between themselves this have the monopoly right in general insurance business in India. This is an important aspect of the matter.

39. u/s 31 every officer or other employee of .the respondent-company shall be deemed to be public servant for the purpose of Chapter IX of the Indian Penal Code. One of the most important provisions in this regard is contained in Section 33 which provides that no provision of law relating to the winding up of companies shall apply to the respondent-company and that the respondent-company shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct. Further, u/s 38 no suit, prosecution or other legal proceeding shall lie against any officer or other employee of the respondent-company for anything which is in good faith done or intended to be done under the said Act. u/s 39 the Central Government has been empowered to make rules to carry out the provisions of the said Act. Some of the particulars of such Rule making power arc specified in Sub-section (2), This is very extensive and exhaustive in nature.

40. In the light of the aforesaid provisions relating to the respondent No. 2 applying the test laid down by Mathew, J., in Sukdev Singh's case as followed by the Supreme Court in the latest decision in I.A.A.I. case, it would be clear that the present respondent-company is merely an instrumentality or agency of the Central Government and it is a "State" or "authority " within the meaning of Articles 12 and 226 of the Constitution of India. This is the only conclusion to be followed from a close examination of the provisions of the Act as I have done

hereinbefore. Accordingly I reject the preliminary objection raised on behalf of the respondents in this behalf and I hold that the writ lies against the respondent-company.

41. I am unable to accept the contention made on behalf of the respondents that merely because the respondent-company was all along and still remains a company registered under the Companies Act, on that ground alone I must hold that the respondent-company can never be "State" or "authority" within the meaning of Articles 12 and 226 of the Constitution of India. That is not only criteria. That is merely one of the aspects to be taken into consideration in coming to the conclusion as to whether it is an instrumentality or agency of the Government. This can be looked into from another angle. In Sukdev Singh's case all the three Corporations in question, namely, Life Insurance Corporation of India, Industrial Finance Corporation and Oil and Natural Gas Commission were incorporated by the particular Act in question. Similar was the position in I.A.A.I. case, but that did not conclude the matter. If that was the only criteria it would not have been necessary for the Supreme Court to examine the various provisions of the relevant Acts to ascertain whether it was a "State" or "Authority".... In my opinion, whether a particular body is incorporated by the statute or incorporated under the statute, is merely one of the factors to be taken into consideration. The mere fact that a company is or still remains as a company registered under the Company Act is not the end of the matter. It is merely one of the factors to be taken into consideration. If it remains as a company to be governed solely and exclusively or mainly by the Company Act there may not be any question of instrumentality or agency. But there may be a case where though the company in fact remains a company registered or incorporated under the Companies Act or under any other similar Act still the Government may make the same its instrumentality or agency by making suitable provisions. To give the extreme example if in an act of nationalisation, while vesting the shares of the company in the Central Government or any other body set up by it, the company was allowed to retain its position as a company registered under the Companies Act but it has provided that irrespective of the provisions of the Companies Act, or any other Act, its constitution of the Board of Directors and its management and other rights and duties shall be governed by the direction of the Central Government to that effect, can it still be said that in spite of the same it is not an instrumentality or an agency of the Government merely because it still remains a company registered under the Companies Act? In my opinion it cannot. Further, the contention in this effect on behalf of the respondents is also contrary to the views expressed by Bhagwati, J., in I.A.A.I. case.

42. I am unable to follow the decision of the Punjab and Haryana High Court in the case of M.L. Mehra v. General Insurance Corporation and Ors. (supra). In that case the question involved was whether the National Insurance Company was a State for the purpose of Article 12 or statutory Corporation amenable to the writ jurisdiction under Article 226 of the Constitution of India. National Insurance Company Ltd. was also one of the acquiring companies like the

respondent-company in the present case. The Punjab and Haryana High Court held that it was not a State or a statutory Corporation and that no writ lies. There are various aspects of the said Act and the scheme framed thereunder which have not been taken into consideration in the said judgment, particularly the question as to the nature of the power of the Central Government in respect of framing of scheme. Further this judgment was delivered by the High Court before the I.A.A.I judgment was delivered by the Supreme Court and naturally their Lordships of the Punjab and Haryana High Court did not have the opportunity to consider the latest judgment of the Supreme Court. In my opinion the latest judgment of the Supreme Court in I.A.A.I. case makes the portion very clear. Accordingly I am not in a position to follow the judgment of the Punjab and Haryana High Court.

43. The second preliminary objection is on the question as to whether any writ would lie in the facts and circumstances of the case as the "Procedure" has not statutory force. In this context at the outset I may point out one thing. Any direction given by the respondent- Corporation is binding on the respondent-company by virtue of the provisions of Section 19(3) of the Act. Accordingly, it would not be strictly correct to say that this procedure which has been laid down by the respondent-Corporation has no statutory force at all. It is no doubt stated that this was adopted by the Board of respondent-company and, therefore it is a merely procedure laid down by the Board. In my opinion, whether the Board of the respondent-company has adapted the procedure or not, by virtue of the provision of the Act it would have been still binding on the respondent- company. Therefore, it would not be correct to say that this has got no statutory force at all.

44. Assuming that the " procedure" has no statutory force still the question remains whether a writ lies for non-compliance of +he same. This aspect of the matter was also considered by Bhagwati, J. in I.A.A.I. case (supra). I shall refer to the relevant portion of this judgment in this context. After holding that the para 1 of the notice prescribed a condition of eligibility Bhagwati, J., held that this was the standard or norm or eligibility laid down by the 1st respondent and since the 4th respondent did not satisfy the standard or norm it is not competent to the 1st respondent to entertain the tender of the 4th respondent. In this context Bhagwati, J., stated that it was a well-settled rule of Administrative law that the authority must be vigorously held to the standard by which it professes its action to be judged and it must scrupulously observed those standards no pain of invalidation of an act in violation of the same. Bhagwati, J., pointed out that this rule though supportable also as emanating from Article 14 does not rest merely on that Article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. In this context he observed as follows:

There is no reason why we should hesitate to adopt this Rule as a part of our continually expanding administrative law. To-day with tremendous expansion of

welfare and social functions, increasing control of material and economic resources" and large scale assumption of industrial and commercial activities by the State, the power of the executive Government to effect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of the State Police, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and, restrict the power of the executive Government so as to prevent its arbitrary application or exercise.

45. It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power interest of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimum requirement. And to the application of the principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege.

46. To-day the Government, is a welfare State, is the regulator and dispenser of special services and provider of large number of benefits, including, jobs contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional form of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again thousands of people are employed in the State and the Central Government and local authorities. Licences are required before one can engage in many kinds of business or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often reasonable subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for maintaining and other purposes. These resources are available for utilisation by private Corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move clear to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on the account, can it be said that they do not enjoy any legal protection?... Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its will? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of

this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess formerly regarded as privileges, have been recognised as rights while others procedural safeguards but also by confining structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on " The New Property " in 73 Yala Law Journal 733", that Government action be based on standards that are no arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to particular political party or professing a particular religious faith, " The Government is still the Government when it acts in the matter of granting largess and it cannot set arbitrarily. It does not stand in the same position as a private individual".

47. Bhagwati, J., agreed to the observation of Mathew, J., in V. Punnen Thomas Vs. State of Kerala, and the observation of Ray, C.J., in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , to this effect. Bhagwati, J. further observed as follows:

The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms or largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standards or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences, etc., just be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

It was in pursuance of the policy envisaged in this and subsequently resolutions on Industrial Policy that Corporations were created by Government for getting up and management of public enterprises and carrying out other public functions. Ordinarily, these functions could have been carried out by Government departmentally through its service personnel, but the instrumentality or agency of the Corporations was restored to in these cases having regard to the nature of

the task to be performed. The Corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of Corporation should equally be subject to the same limitations. But the question is how to determine whether a Corporation is acting as instrumentality or agency of Government. It is a question not entirely free from difficulty.

Now, obviously where a Corporation is an instrumentality or agency of Government, it would not be exercise of its power or discretion, but subject to the same constitutional or public law limitations as Government. The Rule we have discussed above must apply equally where such Corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes as its sweet will, but its action must be in conformity with some principle which meets the tests of reason and relevance.

48. The Rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decision of this Court in *E.P. Ravappa v. State of Tamil Nadu* and the decisions of the Court in *E.P. Roy v. Union of India* that Article 14 strikes at arbitrariness in State action and answers fairness and equality of treatment. It appears that State action must not be arbitrary but must be based on some rational and relevant principles which is nondiscriminatory, it must not be guided by any irrelevant consideration, because that would be denial of equality. The principles of responsiveness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority or law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual/or otherwise with a third party, but its action must conform to some stand or not which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Eurusian Equipment and Chemicals Ltd. v. State of West Bengal* (supra) where the learned Chief Justice pointed out that the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the laws. Equality of opportunity should apply of matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations

with the Government because of the order of black-listing. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations or the purchase of the goods. " It must, therefore, follow as a necessary corollary from the principles of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and nondiscriminatory grounds.

49. Applying this principle in the facts and circumstances of this case, I find that this norm of standard laid down by the said procedure, whether statutory or non-statutory, has not been followed in the case of the 45 persons who had acted temporarily for not exceeding 120 days in the respondent-company sometime or other in the past. In my opinion, it was not open to the respondent-company to make any such departure in the case of such 45 persons. No such power of relaxation was reserved to the authorities concerned. This procedure was to be followed in respect of each and every candidate. Merely because a candidate was temporarily employed at some time or other in a post for some period, that would not justify the respondent-company from making a departure from the procedure which is applicable in respect of all the candidates. The examination which might have been held in respect of all these temporary candidates is of a different nature. They were for an ad hoc and temporary appointment for a period not exceeding 120 days. The standard is not the same. Same test could not here been applied in respect of temporary appointments as in the case of the permanent appointments. Further there is no merit in the contention of Mr. Ghosh that the company had the power to relax and, therefore, it had done so. Similar question was agitated before the Supreme Court in I.A.A.I. case when it was argued that it was possible for an authority to enter into direct negotiation. In the present case it would have been open for the authority concerned to make provisions for such relaxation in the procedure in accordance with law but it was not so done. Further even if such power of relaxation could be exercised it could have been exercised only by the Board and not anyone else. Admittedly, there is no such relaxation by the board. Further no such relaxation could have been made by the Board also without the approval of respondent-Corporation having regard to the direction of the Corporation. Relaxation of a Rule of recruitment is not permissible unless there is an express provision to that effect.

50. In my opinion, the authority concerned in the present case acted arbitrarily and unreasonably in not following paragraph 17 and proceeding on the basis that in the case of these 45 persons no such prerecruitment written test was

necessary. The result is that some persons who are not eligible candidates within the meaning of the said procedure, are treated as eligible candidates. This is neither fair nor reasonable. Accordingly I reject this contention raised on behalf of the respondents.

51. I may make it clear that, in my opinion, this is also violative of Articles 14 and 16 of the Constitution of India. This will be supported by my findings as above and I need not add anything more. The petitioners and these 45 persons were similarly situated so far as the permanent appointment is concerned. Merely because some people worked temporarily for some time does not make any difference. So far as permanent recruitment is concerned having regard to such " procedure " no such difference has been recognised by the rules. The so-called relaxation which is not authorised by the " procedure " is without any intelligible different.

52. I now take up the preliminary objection, i.e., the question as to whether the petitioners have the locus standi to maintain this writ petition. An argument of this nature was made in I.A.A.I. case and the Supreme Court negated the same. In this context Bhagwati, J., observed as follows:

That takes us to the next question whether the acceptance of the tender of the 4th respondent was invalid and liable to be set aside at the instance of the appellant. It was contended on behalf of the 1st and the 4th respondents that the appellant had no locus standi to maintain the writ petition since no tender was submitted by him and he was a mere stranger. The argument was that if the appellant did not enter the field of competition by submitting a tender, what did it matter to him whose tender was accepted, what grievance could he have if the tender of the 4th respondents was wrongly accepted. A person whose tender was rejected might very well complain that the tender of someone also was wrongly accepted, but it was submitted, how could a person who never tendered and who as at no time in the field put forward such a complaint? This argument, in our opinion, is misconceived and cannot be sustained for a moment. The grievance of the appellant, it may be noted, was not that his tender was rejected as a result of improper acceptance of the tender of the 4th respondents, but that he was differently treated and denied equality of opportunity with the 4th respondents in submitting a tender. His complaint was that if it were known that non-fulfilment of the condition of eligibility would be no bar to consideration of tender and competent for obtaining a contract. But he was precluded from submitting a tender and entering the field of consideration by reason of the condition of eligibility, while so far as the 4th respondents were concerned, their tender was entertained and accepted even though they did not satisfy the condition of eligibility and this resulted in inequality of treatment which was constitutionally impermissible. This was there can be no doubt that if this grievance were well-founded the appellant would be entitled to maintain the writ petition. The question is whether this grievance was justified in law and the acceptance of the tender of the 4th respondents was vitiated by any legal infirmity.

53. In my opinion, in the present case the petitioners are entitled to maintain this writ petition and they have got the locus standi to maintain the same. As observed by Bhagwati, J., in the present case also it may be said that the petitioners who have been rejected as not being eligible candidates because they failed in the written test held under the said " procedure " might very well complain that these 45 persons who have not appeared in the written test have been wrongly accepted as eligible candidates I have ground that these 45 persons who had acted temporally in the past, and been exempted from appearing at the written test provided by paragraph 17 of the procedure. This written test was applicable in respect of all persons seeking permanent appointment. Only if a person succeeded in this written test, then and then only he is entitled to be included in the list of candidates prepared under paragraph 20. The eligible candidates who are entitled to be called for interview under paragraph 22 are to be ascertained in this manner. Then and then only the Committee constituted by the appointing authority may interview these eligible candidates for their final selection. One of the provisions of paragraph 23 in that in selecting the candidates for recruitment the Committee shall take into account the qualifications of the candidates, etc., and shall allot marks out of a maximum of 50. A maximum of 25 marks shall be allotted for the candidates' performance at the pre-recruitment test. In the present case the Committee is not in a position to take into consideration the performance of these 45 candidates at the pre-recruitment test because they have not appeared in any such test. The test supposed to have been undertaken by these persons for their temporary appointments, cannot be treated as pre-recruitment test within the meaning of paragraph 23. read with paragraph 17, The pre-recruitment test contemplated by paragraph 23, is the prerecruitment test held under paragraph 17 for the purpose of permanent recruitment to the post in the facts of this case. Therefore, the result is that though the petitioners cannot be treated as eligible candidates because they had failed in the pre-recruitment written test under paragraph 17, these 45 persons who had not appeared in such pre-recruitment test, will be treated as eligible candidates and considered for interview and ultimately for final selection. In my opinion, the petitioners are well within their rights to maintain this writ petition on the ground that they are on the same footing as these 45 persons. These 45 candidates are not eligible candidates just like the petitioners. Therefore, these 45 persons cannot be treated in separate footing. In my opinion, the petitioner have locus standi to maintain this writ petition.

54. I have already held that it is an admitted position that paragraph 17 had not been followed in the case of these 45 persons. The justification and validity of such action and acceptance of these 45 persons as eligible candidates cannot be upheld.

55. In that view of the matter the application is allowed and the Rule is made absolute to the following extent. There will be writ of mandamus directing the respondent-company to act according to law and in accordance with the observations made hereinbefore. There will also be a writ of mandamus directing

the respondent-company to act according to law and in accordance with the observations made herein above. There will also be a writ of mandamus directing the respondent-company to act in accordance with the recruitment procedure being Annexure " A " to the petition until the same is modified in accordance with law. There will also be a writ of mandamus restraining the respondent-company from calling for interview any candidate or candidates for recruitment to make any appointment to fill up the said vacancies in favour of any person who has not appeared in the pre-recruitment written test as specified in paragraph 17 of the procedure and not to treat any person who has not passed the pre-recruitment written test as eligible candidate for any such interview or for any final selection or appointment.

56. Certain interim orders were made during the pendency of the Rule. If pursuant to the same any such interview or appointment has been made, the same shall be treated as null and void and without any effect whatsoever.

57. The effect of the operation of the order has been sought for in this respect I pass the following order. If the respondent-company has given any appointment and if any of these 45 persons have actually joined their posts before today, then they will continue to function for a further period of fortnight from this date. I may, however, make it clear that save and except as above, there will be no interview to or selection of any candidate or any appointment in respect of any person who has not successfully appeared in the written test pursuant to paragraph 17 of the " procedure .

58. There will be no order as to costs.