
(2001) 09 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16860 of 1998

Ch. Seetharamaiah

APPELLANT

Vs

Andhra Pradesh Paper Mills Limited, Secunderabad

RESPONDENT

Date of Decision : 05-09-2001

Acts Referred:

Companies Act, 1956 — Section 3, 617
Constitution of India, 1950 — Article 12, 14, 19(1), 21, 226
Contract Act, 1872 — Section 23
General Clauses Act, 1897 — Section 2(42)
Industrial Disputes Act, 1947 — Section 2

Citation : (2001) 5 ALD 574 : (2001) 5 ALT 494

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. A. Sita Rama Rao, for the Appellant; Mr. S. Ravi, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner at the relevant point of time was serving as Vice-President (Finance) in the establishment of M/s. Andhra Pradesh Paper Mills Limited, the 1st respondent in the writ petition. In this writ petition the petitioner has assailed the validity and legality of the Order No. CPD/Estt/97, dated 30-9-1997 accepting the resignation of the petitioner submitted on 30-9-1997 and the order dated 15-10-1997 terminating the services of the petitioner as General Manager (Finance).

2. The background facts leading to the filing of this writ petition, as stated by the petitioner in the affidavit, be noted briefly as under: The petitioner is a qualified Chartered Accountant having had extensive and wide exposure as a Senior Finance Executive in Multinational companies and as also in public sector companies both in Central and State sector. The petitioner was selected as Deputy General-Manager (Finance) to serve in the establishment of the 1st respondent in September, 1988 through All India open advertisement and

selection and he joined the 1st respondent company in the month of January, 1989. According to the petitioner, the 1st respondent company is a Government company in which the Government of Andhra Pradesh and the public financial institutions have been holding the majority of the shares even after 27% of the share capital has been divested in favour of private sector promoters, who agreed to participate in the day-to-day management with the Government representatives providing the policy guidelines and major inputs in the working of the company. After satisfactory completion of the probationary period, the petitioner was confirmed as General Manager (Finance) in early 1989. Subsequently, the petitioner was elevated to the position of Vice-President (Finance) in November, 1996 and he was also rewarded with salary increase of Rs. 2,500/- per month and Rs. 3,000/- per month effective from 1-4-1996 and 1-4-1997 respectively. When the matter stood thus, Sri R.C. Malla, Executive Director, 2nd respondent herein joined the 1st respondent company in May, 1997 and he without assigning any reasons demanded the resignation of the petitioner on the evening of 30th September, 1997 and he threatened the petitioner that he would terminate the services of the petitioner forthwith if the petitioner did not hand in resignation immediately. The petitioner in order to buy peace and time to deal with the matter in a more tranquil atmosphere handed over a letter giving three months notice expressing his desire to resign from the post and the said letter was delivered at the residence of the 2nd respondent in the evening of 30-9-1997 as demanded by him. Quite surprisingly, the 2nd respondent treating the notice of resignation dated 30-9-1997 as a resignation letter of the petitioner, accepted the same by passing an order actually on 1-10-1997, but pre-dating the order as if it was issued on 30-9-1997 itself and the petitioner was also relieved on 1-10-1997 and this information regarding acceptance of the resignation of the petitioner and his relief was communicated to all concerned including the Banks/Tax authorities etc. The petitioner on coming to know of the action taken by the 2nd respondent, he sent in a letter dated 3-10-1997 telling the 2nd respondent that there was no resignation at all and even the notice of resignation obtained from the petitioner was outcome of the threat and coercion exercised by the 2nd respondent and requested the 2nd respondent to revoke the impugned office order dated 30-9-1997 and to permit the petitioner to resume duty in the office of the Vice-President (Finance). The 2nd respondent did not reply to the letter of the petitioner-dated 3-10-1997. On the other hand, the 2nd respondent passed order dated 15-10-1997 terminating the services of the petitioner with effect from 16-10-1997 in terms of clause (13) of the letter of appointment dated 24-9-1998 and that the said letter of termination the 2nd respondent sent a cheque for Rs. 59,100/-dated 15-10-1997 and another cheque for Rs. 2,707/- dated 16-10-1997 purported to be towards notice pay and pay for the period from 1-10-1997 to 15-10-1997 respectively and the petitioner returned both the cheques to the 2nd respondent. The petitioner claims that after the 2nd respondent made the order on 15-10-1997 terminating his services, he came to know the evil design planned by the 2nd respondent in connivance with the 3rd respondent herein, namely, Sri P.C. Parakh, IAS, Director

of the 1st respondent-Company, and the 4th respondent herein, Mr. P.N. Jhawan, Senior Manager (Secretarial Services) of the 1st respondent-Company to remove the petitioner from the service as the Vice-President (Finance) and the outcome of that evil design was the order made by the 2nd respondent on 15-10-1997. While so alleging, the petitioner has stated-

"16. I submit that I have since come to know that the whole exercise was a carefully planned one and was carried out by respondents 2,3 and 4, first by engineering a letter (copy at annexure at 13) from the third respondent Sri P.C. Prakah, IAS, representing the Government of Andhra Pradesh, to the effect that I had visited him and left behind a bag containing bundles of currency notes of Rs. 100/- denomination and that on enquiry indicated that this is a part amount of the kickbacks for the Government Directors, as similar amount has been paid to the promoter Directors, and he was greatly concerned about the mal-functioning of the company and the practice of kickbacks being taken by the officers of the company at various levels from it's suppliers requesting immediate withdrawal of the "Letter of Intent" issued for FBC conversion Job, call for the emergency meeting of the Capital Goods Committee and institute an enquiry by Sri D. Subba Rao, IAS, Secretary-Finance, Government of A.P. And Sri Kamalakar representing the Government of A.P. and the Financial Institutions.

17. I submit that I have come to know that the allegations contained in letter were discussed in a meeting of the Committee of Directors on 30th September, 1997 when Sri Parakh was present and the drama of threat, blackmail and coercion was enacted by the E.D. immediately after the conclusion of the said meeting on 30th September, 1997 which illustrates that Sri P.C. Parakh followed up his allegation in his discussions with other Directors on that day and demanded my scalp without enquiry and without motive and it was thus the immediate provocation for the action that followed.

18. I submit that the allegation contained in the said letter is totally false and the Committee which went into the transaction has reportedly held that there were no irregularities in the award of the work, and the matter was discussed in the Committee of Directors and the same was presented to the Board reportedly in November, 1997 after I was forced to leave the company and the award was confirmed.

19. I submit that having realised that that the allegation of irregularities and kickbacks in the contract did not succeed and bent upon easing out a key person from the hierarchy the ED indulged in threats and blackmail and when they were resisted chose to invoke a clause in the original appointment letter to remove me from my position, illegally and without authority. The ED was neither my appointing authority nor my disciplinary authority and in any case, when serious allegations of my having tried to bribe a Government Director were thrown around, it was not open to the company to brush aside such allegations and merely satisfy itself by removing me, which in any case, appeared to be their aim."

3. The petitioner, so alleging has filed this writ petition assailing the legality of the order of the 2nd respondent dated 30-9-1997 accepting the resignation of the petitioner and also the order made by him on 15-10-1997 terminating the services of the petitioner as Vice-President (Finance).

4. Opposing the writ petition, the Management of the 1st respondent-Rice Mill filed counter-affidavit in the month of July, 1998 inter alia contending that the 1st respondent-Company is not a Government Company and it is only a public limited company and, therefore, the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and therefore the writ petition is not maintainable.

5. The 1st respondent dealing with the allegations of the petitioner contained in paras 16 to 19 of the affidavit filed in support of the writ petition has stated thus-

"With reference to the specific allegation in para 16 onwards, it is denied that the respondents 2, 3, 4 tried to frame the petitioner alleged or at all. The allegations are reckless. The entire game was played by the petitioner with a view to embarrass and tarnish the image of the management of the company, but the petitioner is now trying to wriggle out of the situation. The petitioner's conduct is separately explained in an affidavit filed by respondent No.3. The company or its management never ever asked the petitioner to handover any amount to any Director as alleged kick back. No cash was given to the petitioner to be delivered to any Director. As already stated, with a view to malign the image of the company, the petitioner had undertaken the said venture on his own. The company and the management had thought it fit, having regard to the position held by the petitioner, that he should have an untroubled exit from the company. The petitioner for strange reasons best known to him is exposing himself to all his misdoings. The management and company categorically deny that they had anything to do with the alleged kickback or the alleged bribes etc."

6. Thus, in the counter of the 1st respondent, it was contended that this writ petition is not maintainable against the 1st respondent-Company. While taking that stand, the 1st respondent also denied all other material allegations made by the petitioner in the affidavit generally without any specific traversing of the allegations made in the affidavit of the petitioner as baseless and reckless and the 1st respondent requested the Court to decide the maintainability of the writ petition as a preliminary issue. The 1st respondent also sought liberty to traverse the allegations made in the writ petition at a later stage as and when the need arises.

7. Sri P.C. Parakh, IAS, Director of the 1st respondent-Company against whom certain allegations are made in para 16 of the affidavit of the petitioner, has filed a separate counter-affidavit in the month of July, 1998 denying the allegations.

8. To these counters, the petitioner filed reply affidavit dated 28-7-1998. In the reply affidavit, the petitioner apart from contending that there is pervasive Government control in the management and affairs of the 1st respondent-

company has referred to number of judgments of the Supreme Court in support of his plea that the termination of his services by the 2nd respondent on 15-10-1997 is illegal.

9. In view of the preliminary objection taken by the 1st respondent in its counter-affidavit filed in the month of July, 1998 contending that the 1st respondent-Company is not a Government company and, therefore, the writ petition is not maintainable, the petitioner filed additional affidavit dated 6-9-1998 maintaining that the 1st respondent-Company is an instrumentality or agency of the State of Andhra Pradesh and the dispute brought before this Court by way of this writ petition arose due to the direct intervention of the State and, therefore, the 1st respondent company is amenable to writ jurisdiction of this Court under Article 226 of the Constitution.

10. Subsequently, the Management of the 1st respondent-Company filed additional counter-affidavit dated 16-12-1998 in pursuance of the direction of this Court to file a counter traversing all the allegations in the affidavit filed in support of the writ petition. Traversing the material allegations made by the petitioner in the affidavit filed in support of the writ petition, it is stated-

"8. With reference to the allegations in para 7, it is denied that the order was pre-dated as alleged or at all. In as much as the decision was taken to even otherwise terminate the services of the petitioner, it was only right for the 1st respondent to accept the resignation forthwith and also to communicate the same to all Banks and Tax authorities in particular and others concerned with the same.

9. The subsequent letter of the petitioner allegedly recalling the resignation, and stating that it was obtained under threat and coercion contained concocted reasons and the contents of the said letters are denied.

10. With reference to the allegations in para 9, it is denied that there was any mala fides as alleged or at all. The petitioner had tendered his resignation. Even otherwise, the first respondent had decided to terminate his services. It was for this reason that the 1st respondent offered to pay for notice period, as the 1st respondent was not desirous of having the services of the petitioner any longer."

11. Further, in paragraph 18 of the counter-affidavit dealing with the allegations in para 17 of the affidavit filed in support of the writ petition, the deponent has specifically denied that there was any threat, blackmail or coercion as alleged on 30-9-1997 and the petitioner voluntarily submitted resignation because he chose to quit the office honourably. In the same counter-affidavit, traversing the claim of the petitioner made in the additional affidavit that the writ petition is maintainable, the earlier stand of the 1st respondent is reiterated by giving facts and figures and concluding that the 1st respondent-Company cannot be treated to be an instrumentality or an agency of the State.

12. The petitioner, in response to the additional counter-affidavit dated

16-12-1998, filed reply affidavit dated 16-1-1999 reiterating and supplementing the stand that the writ petition is maintainable and the action of the 2nd respondent in treating the notice or resignation dated 30-9-1997 as resignation letter and subsequently terminating his services by his order dated 15-12-1997 as illegal, arbitrary and violative of Article 14 of the Constitution.

13. I have heard the learned Counsel for the parties. Sri S. Venkata Reddy, learned Senior Counsel appearing for the petitioner would contend that the action of the 2nd respondent dated 30-9-1997 in treating the notice of resignation given by the petitioner on 30-9-1997 as resignation itself and relieving the petitioner with effect from 1-10-1997 is totally irregular, illegal and against the settled principles of law. The learned senior Counsel would contend that what the petitioner submitted to the 2nd respondent on 30-9-1997 was only a notice of resignation, which had to come into effect after expiry of the notice period of three months. The learned senior Counsel would contend that a resignation of an employee/officer takes effect only from the date mentioned in the notice of resignation and such date cannot be advanced by the employer under any circumstance accepting the resignation from an anterior date to the date mentioned in the resignation letter. The learned senior Counsel would also contend that it is open for an employee or an officer concerned to withdraw the letter of resignation before it becomes effective. The learned Counsel would also maintain that even the notice of resignation submitted by the petitioner on 30-9-1997 was not voluntary and that was obtained by the 2nd respondent by administering threat and coercion. Secondly, the learned senior Counsel would contend that the action of the 2nd respondent dated 15-10-1997 terminating the services of the petitioner as Vice-President (Finance) is totally vindictive, mala fide, irregular and illegal. The learned Counsel would submit that the impugned action taken by the respondent on 15-10-1997 in the purported exercise of power reserved by the Management under clause (13) of the appointment order was only an alibi to wriggle out of an apparently illegal act committed by the 2nd respondent on 30-9-1997 in treating the notice of resignation as resignation itself and accepting the same with immediate effect. Even otherwise, the learned senior Counsel would maintain, that the termination of services of the petitioner with effect from 16-10-1997 without assigning any reason is totally arbitrary, unreasonable and that action cannot be sustained on the touch-stone of Article 14 postulates. Thirdly, learned senior Counsel would contend that when the petitioner has made several serious allegations against the 2nd respondent personally, he has not chosen to file personal affidavit traversing the allegations levelled against him. The counter-affidavit sworn to by the Secretary of the 1st respondent-Company as regards it traverses the personal allegations levelled against the 2nd respondent cannot be taken note of, because he has no personal knowledge of what transpired between the petitioner and the 2nd respondent and he was not a witness to the same.

14. Sri S. Ravi, learned Counsel appearing for the respondents would at the threshold contend that the writ petition itself is not maintainable for the 1st

respondent-Company is a public limited company and it cannot be said that the State Government has any pervasive effective control in the matter of administration and the management of the Company and, therefore, it cannot be treated as an "instrumentality or agency of the State" within the meaning of Article 12 of the Constitution. The learned Counsel would contend that from the pleadings and the materials placed by the petitioner before the Court, it cannot be said that the 1st respondent-Company passes the several tests laid down by the Apex Court to determine whether a body or a Corporation or an institution" could be treated as a "State" within the meaning of Article 12 of the Constitution. Adverting to the allegations levelled by the petitioner against the 2nd respondent and respondents 3 and 4, learned Counsel would maintain that the action of the 2nd respondent dated 30-9-1997 and 15-10-1997 are neither malicious nor unreasonable as claimed by the petitioner, but on the other hand, the 2nd respondent with magnanimity, on humanitarian consideration and in order to ease out the petitioner without sacrificing his honour chose to accept the resignation tendered by the petitioner and later terminated his services by invoking the power reserved by the Management under clause (13) of the appointment order. The learned Counsel would contend that there was no necessity for the 2nd respondent to give reasons in the termination order. The learned Counsel would conclude that the petitioner has utterly failed to make out any ground warranting exercise of extraordinary, discretionary power vested in this Court under Article 226 of the Constitution even if in the opinion of the Court the writ petition filed by the petitioner is maintainable.

15. Having heard the learned Counsel for the parties, the following questions arise for decision:

1. Whether the writ petition is maintainable against the 1st respondent-Company?
2. Whether the order of the 2nd respondent dated 30-9-1997 accepting the resignation of the petitioner with effect from 1-10-1997 and the subsequent order of the 2nd respondent dated 15-10-1997 in terminating the services of the petitioner with effect from 16-10-1997 are valid and legal?

Question No. 1:

16. The materials placed before the Court would show that the 1st respondent-Paper Mill was started as a Departmental Undertaking several decades back and continued to be wholly managed by the Government till 1964. It was started to exploit the forest resources of the State and to ensure availability of paper, an essential commodity and the industry itself was considered a core sector industry under the Industrial Policy of the Government. Even in 1964, after its conversion into a corporate entity it continued to be a Government Company in terms of Sections 3 and 617 of Companies Act, 1956. However, due to difficulties experienced in ensuring day-to-day management and the abolition of Managing Agency System (MAS) and need to infuse funds and managerial skills required, an agreement was worked out with M/s. West Coast Paper Mills (whose

successors are M/s. Bangurs) providing for joint participation in the management of the Company, agreeing not to change the share holding pattern except with mutual consent, equal number of Directors on the Board representing the Government and the private participant, neither of the parties i.e., Government or the private party were to acquire any further shares behind the back of the other party and if either of them were to shed their holdings, such shares were to be offered to the other party and the pricing mechanism was pre-determined in the agreement.

17. It is stated in the affidavit filed on 6-9-1998 by the petitioner that the holding in the paid up share capital of the company which as on 31-3-1998 stood at 5.62 crores by the Government and Financial Institutions at 27% each 27% with East Coast Paper Mills (Bangur's) 27% with Central Financial Institutions and the rest with public, the company has also outstandings of over Rs. 56 crores to Central Financial Institutions/ Banks as secured loans and thus the company mainly functions with the funds of the Government and Central Financial Institutions and for this purpose Committees of Directors have been constituted consisting of equal numbers - two each on behalf of the Government and Bangurs, one for deciding on acquisition of capital goods, another for deciding on purchases and a third to deal with finance and other matters, without the approval of which no action can be taken by or on behalf of the Company, and thus it is a department of the State Government given a corporation garb. It is further stated that at the time of formation of the company, the vested rights of the employees were protected except that they ceased to be civil servants for the purpose of Article 311 of the Constitution. It is further stated that clause (vi) of the agreement provides that the State Government will co-operate with the company in their efforts to secure the approval of the Government of India (which was a statutory requirement at the time) as well as the shareholders of APPM in General Meeting for the appointment of Managing Director and Technical Directors on the terms and conditions agreed to by both parties in this behalf. It is further stated that the company has a long term agreement with the Government of Andhra Pradesh for purchase of raw material i.e., bamboo and hard wood of guaranteed quantities per annum, failure to lifting of which result in penal consequences - having to pay for such guaranteed quantities at the agreed rates to the Forest Department of the State Government, in other words, the duty of exploitation and collection of forest produce has been entrusted to the company by the Government.

18. Opposing the claim of the petitioner that the 1st respondent-Company is an "instrumentality or an agency of the State" and, therefore, the writ petition is maintainable, the 1st respondent, in the counter-affidavit filed in the month of July, 1998 stated thus-

"3. The averment of the petitioner that the respondent is a Government Company is denied. As per the definition in Section 617 of the Companies Act, 1956, a Government company means a company in which either the Central

Government, State Government(s) or partly the Central and partly by one or more State Government, hold not less than 51% of the shareholding. In the present instant case the Government of Andhra Pradesh holds only 27% of the share capital. It is evident that the respondent company is not a Government company.

4. It is submitted that the petitioner cannot invoke the extraordinary jurisdiction of this Hon"ble Court under Article 226 of the Constitution as the respondent No. 1 against whom the direction is sought is only a public limited company. There is no pervasive Government control. The finances of the respondent No. 1 are not controlled by any Government. The funds of the respondent No. 1 are at the disposal of the company and its Board of Directors. The shareholding in the company by Government is marginal as compared to the total shareholding. Respondent No. 1 does not have any statutory function or does it discharge any such function. Consequently, this writ petition is misconceived."

Article 12 reads-

"In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

19. The question as to under what circumstances private bodies like a Company or a Corporation or a society could be considered to be "other authorities" within the meaning of that term occurring in Article 12 of the Constitution arose for decision before the Apex Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, . A Constitution Bench of the Supreme Court, on an in-depth and comprehensive treatment of the question and on consideration of its earlier decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , evolved certain tests for determining as to when a corporation or a company or a society can be said to be an "instrumentality or an agency of the State". Paragraph 9 of the said judgment reads-

"The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government with the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority*'s case as follows:

1. One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an

instrumentality or agency of Government.

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

3. It may also be a relevant factor.....

whether the corporation enjoys monopoly status which is the State conferred or State protected.

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

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

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

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

20. The Constitution Bench, however, has made it very clear that those tests evolved by it are neither conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution.

21. Another Constitution Bench of the Supreme Court in 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, , dealing with the meaning of the word "authorities" occurring in Article 12 of the Constitution held-

"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 and Nixon v. Condon (1931) 286 US 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 fundamentals of life and the determinations 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 obstacles in the path of such achievements and in assisting individual in realising 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 "businesses 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 US 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 will 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."

The difficulty of separating vital Government functions from non-Government functions has created further difficulties. Is the distinction between Governmental and non-Governmental 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 Herbert 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 Homes said, the Constitution does not enact Herbert Spencer's social statics. This applies equally to the definition of state function for legal purposes."

22. A Division Bench of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , dealing with the expression "State, in the context of Parts III and IV of the Constitution, held-

"what does the expression "the State" in the context of Parts III and IV of the Constitution mean?

Men's concept of the State as a polity or a political unit or entity and what the functions of the State are or should be have changed over the years and particularly in the course of this century. A man cannot obstinately cling to the same ideas and concepts all his life. As Emerson said in his essay on "Self-Reliance": "A foolish consistency is the hobgoblin of little minds", Man is by nature ever restless, ever discontent, ever seeking something new, ever dissatisfied with what he has. This inherent trait in the nature of man is reflected in the society in which he lives for a society is conglomerate of men who live in it. Just as man by nature is dissatisfied, so is society. Just as man seeks something new, ever hoping that a change will bring about something better, so does society. Old values, old ideologies and old systems are thus replaced by new ideologies, a new set of values and a new system; they in their turn to be replaced by different ideologies, different values and a different system. The ideas that seem revolutionary become outmoded with the passage of time and the heresies of today become the dogmas of tomorrow. What proves to be adequate and suited to the needs of a society at a given time and in particular

circumstances turns out to be a wholly unsuited and inadequate in different times and under different circumstances.

The story of mankind is punctuated by progress and retrogression. Empires have risen and crashed into the dust of history. Civilisations have flourished, reached their peak and passed away. In the year 1625, Carew, CJ., while delivering the opinion of the House of Lords in *Re the Earldom of Oxford* [1625) W Jo 96 101 = (1626) 82 ER 50, 53], in a dispute relating to the descent of that Earldom, said:

.....and yet time hath his revolution, there must be a period and an end of all temporal things, finis rerum, an end of names and dignities, and whatsoever is terrene.....

The cycle of change and experiment, rise and fall, growth and decay, and of progress and retrogression recurs endlessly in the history of man and the history of civilisation. T.S. Eliot in the First Chorus from "The Rock" said:

O perpetual revolution of configured stars,

O perpetual recurrence of determined seasons,

O world of spring and autumn, birth and dying;

The endless cycle of idea and action, Endless invention endless experiment.

The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable. The early nineteenth century essayist and wit, Sydney Smith, said: "When I hear any man talk of an unalterable law, I am convinced that he is an unalterable fool." The law must, therefore, in a changing society march in tune with the changed ideas and ideologies. Legislatures are, however, not best-fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the Legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must be of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and time-consuming to meet the immediate needs. This task must, therefore, of necessity fall upon the Courts because the Courts can by the process of judicial interpretation adapt the law to suit the needs of the society."

The Division Bench further, on consideration of number of authorities, held-

"What is the position before us? It is only one case decided on a concession and another based upon an assumption that a Government company is "the State" under Article 12? That is the position in fact but not in substance. As we have seen, authorities constituted under, and corporation established by, statutes have

been held to be instrumentalities and agencies of the Government, in a long catena of decisions of this Court. The observations in several of these decisions, which have been emphasised by us in the passages extracted from the judgments in those cases, are general in their nature and take in their sweep all instrumentalities and agencies of the State, whatever be the form which such instrumentality or agency may have assumed. Particularly relevant in this connections are the observations of Mathew, J., in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*, of Bhagawai, J (as he then was) in *International Airport Authority case* and *Ajay Hasia case* (supra), and of Chinnappa Reddy, J., in *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, . If there is an instrumentality or agency of the State which has assumed the garb of a Government company as defined in Section 617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State. For the purposes of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State. The Corporation, which is the appellant in these two appeals before us, squarely falls within those observations and it also satisfies the various tests which have been laid down. Merely because it has so far not the monopoly of inland water transportation is not sufficient to divest it of its character of an instrumentality or agency of the State. It is nothing but the Government operating behind a corporate veil, carrying out a Governmental activity and Governmental functions of vital public importance. There can thus be no doubt that the Corporation is "the State" within the meaning of Article 12 of the Constitution."

23. Now it is well settled that mandamus can be issued to enforce public duty against a person or a body though they are not public officers or statutory bodies. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , a Division Bench of the Supreme Court held-

"In *The Praga Tools Corporation Vs. Shri C.A. Imanual and Others*, , this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed-

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (See Halsbury's Laws of England (3rd Ed. Vol.11 p.52 and onwards)."

Here again, we may point out that mandamus cannot be denied on the ground

that duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract" (Judicial Review of Administrative Act 4th Ed. P.540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found." Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability, of the writ petition."

24. In U.P. State Co-operative Land Development Bank Limited v. Chandra Bhan Dubey, , a Division Bench of the Supreme Court dealing with the question whether the U.P State Co-operative Land Development Bank Limited is amenable to writ jurisdiction under Article 226 of the Constitution held-

"In view of the fact that control of the State Government on the appellant is all-pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of the English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountain-head of all statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step into protect him, be that wrong be done by the

State, an instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part 111 of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a China shop" in the exercise of its jurisdiction under Article 226."

25. A three Judge Bench of the Supreme Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], , dealing with the scope of power under Article 226 of the Constitution to enforce public Law duties and granting public law remedies held-

"The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of contract labour u/s 10(1), the High Court has, by judicial review as the basic structure, a constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by a catena of decisions of this Court starting from *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, , and *S.R. Bommai and others Vs. Union of India and others* etc. etc., . It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law.

The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, , this Court had pointed out that the difficulty will lie in demarcating the frontiers between the public law domain and the private law field. The question must be decided in each case with reference to particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact-situation that this Court

held that there was no need to state reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in *M.C. Mehta and another Vs. Union of India and others*, .

The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law - be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, , that if the legal right of a Manager of a company is denuded on the basis of recommendation by the Board of Management of the company, it would give him right to enforce his right by filing a writ petition under Article 226 of the Constitution. In *Mulamchand Vs. State of Madhya Pradesh*, , this Court had held that even though the contract was void due to non-compliance of Article 229, still direction could be given for payment of the amount on the doctrine of restitution u/s 70 of the Act, since the State had derived benefit under the void contract. The same view was reiterated in *State of West Bengal Vs. B.K. Mondal and Sons*, , and in *The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI)*, . In *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, , a direction was issued to release loan to the respondent to comply with the contractual obligation by applying the doctrine of promissory estoppel.

In *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, , contractual obligations were enforced under public law remedy of Article 226, against the instrumentality of the State. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , contractual obligations were enforced when public law element was involved. Same judicial approach is adopted in other jurisdictions, namely, the House of Lords in *Gillick v. West Norfolk and Wisbech Area Health Authority* (1986 AC 112 : (1985) 3 All.ER 402 : (1985) 3 WLR 830 HL, wherein the House of Lords held that though the claim of the plaintiff was negatived but on the anvil of power of judicial review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in *Roy (Dr) v. Kensington and Chelsea and Westminster Family Practitioner Committee* (1992) 1 AC 624 : (1992) All ER 705 : (1992) 2 WLR 239 HL, the House of Lords reiterated that though a matter of private law is

enforceable by ordinary actions, a Court also is free from the constraints of judicial review and that public law remedy is available when the remuneration of Dr. Roy was sought to be curtailed. In *LIC of India and Another Vs. Consumer Education and Research center and Others*, , this Court held that each case may be examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law remedy has now become thin and practically obliterated."

26. In the same decision, the Supreme Court held that though the right to work under the Constitution is not a Fundamental Right, "but after appointment to a post or office, be it under the State, its instrumentality, juristic person or private entrepreneurs, an employer must be dealt with as per public element and in public interest assuring him equality under Article 14 of the Constitution and all concomitant rights emanating therefrom." In the premise of the above noted tests and the case law which are relevant to answer the question whether a Company or a Corporation or a Society can be considered to be "other authorities" within the meaning of that term occurring in Article 12 of the Constitution and under what circumstances a writ could lie even against a purely private person or a body, let us now proceed to examine whether the 1st respondent company answers those tests. It is contended by the 1st respondent that it is only a public limited company and not a Government company and therefore no writ lies against it. Even assuming that 1st respondent company is not a Government company as contended by it, but if it answers the tests specified in *Ajay Hasia v. Khalid Mujib Sehravardi* (supra) and the other judgments to follow that judgment, it can be treated as an instrumentality or an agency of the State and therefore an "authority" under Article 12 of the Constitution. On a careful consideration of all the materials placed before the Court, I am of the considered opinion that the 1st respondent company answers the tests to hold that it is nothing but an instrumentality or an agency of the State and therefore it is an "authority" within the meaning of that term under Article 12 of the Constitution. The 1st respondent company was initially established in 1924 by the then Government of Madras with a capacity of ten metric tonnes per day at Rajahmundry and this mill was started with a view to exploit the, forest produce, to manufacture all kinds of papers and also to provide employment to the local people. The paper mills was run as a department of the Government. On 13-5-1964, the Government of Andhra Pradesh - 5th respondent herein entered into a joint venture agreement with Mr. G.D. Somani for promotion of a company to take over the A.P. Paper Mills and going concern on terms and conditions specified in the said agreement. On 29-6-1964, the 1st respondent company was incorporated in accordance with the terms of the joint venture agreement. West Coast Paper Mills Limited, a nominee of Mr. G.D. Somani invested Rs. 66 lakhs in the 1st respondent company as per the provisions of the joint venture agreement. On 10-2-1966, Mr. G.D. Somani transferred all his rights and obligations under the joint venture agreement dated 13-8-1964 in favour of West Coast Paper Mills Limited. The Government of

Andhra Pradesh contributed 27% of the share capital, the State and Central Financial Institutions contributed 27% of the share capital, West Coast Paper Mills Limited contributed 27% of the share capital, and the balance 19% of the share capital was issued to the public. Even according to the counter filed by the Secretary of the 1st respondent company, as on 31-3-1998, the Government of Andhra Pradesh was holding 26.67% share-capital, the financial institutions and banks were holding 14.88%, a very substantial part, apart from the secured loans from the public financial institutions constituting more than 98% of the funds employed in the company. In 1981 West Coast Paper Mills Limited transferred all its rights, interests, privileges and benefits to M/s. Digvijay Investments controlled by Mr. L.N. Bangaoor. In July, 1998 in the letter of the offer made by the 1st respondent company to the existing equity share holders on a rights basis, it is stated that the Government of Andhra Pradesh and Digvijay Investments Limited are the Co-promoters of the 1st respondent. The Government of Andhra Pradesh nominates equal number of Directors as the Co-Promoters while the financial institutions nominates two Directors and thus the Government nominees along with the nominees of the Financial Institutions always out number the Directors of the Co-promoters. Even the day-to-day business of the Company is handled by Committees of the Directors (for purchase of capital goods/financial decisions and commercial decisions) constituted with equal representation to the Government and the Co-promoters and in nature of the things there can never be a situation where any decision can be taken against the wishes of the Government, because the Directors nominated by the Government and the financial institutions outnumber the Directors of the Co-promoters. Further, the Government has kept to itself a say in the appointment of the key managerial personnel in the company. The 1st respondent company directly employs about 3800 persons not to speak of thousands of depending on its functioning for their livelihood.

27. From the above noted facts, it can be seen that the 1st respondent company has its origin in Government, subsequently incorporated into a Company to exploit the forest resources of the State which is public resource and property, designed to subserve a vital need of the society, i.e., production of paper required for spread of literacy and achievement of a social goal and continues to have a deep and pervasive managerial control on the affairs of the Company, and even by virtue of its own holding can block any special resolution and thus enjoys a sort of veto on the day-to-day affairs of the Company. It is thus clear that the 1st respondent-company is engaged in matters of high public interest and in performing public functions and its functions are being monitored and controlled by Government ever since it was started in the year 1924 till they were assigned to the Company. It is trite to state that the manufacture of paper and allied products is an activity which is fundamental to the society and in dissemination of knowledge essential for the realisation of the fundamental rights guaranteed under Articles 19(1)(a) and 21 of the Constitution. It is thus very clear that the 1st respondent company is entrusted with duties of public importance closely

related to Governmental functions and are not merely to manufacture of a product and its trading is bore out by its origin and history and the joint venture agreement. In that view of the matter, the contention of the 1st respondent company that it is no different from any other public company and therefore no writ is maintainable cannot be accepted.

28. The counter-affidavits filed by the 1st respondent themselves would show that the letter dated 22-9-1997 addressed by Sri P.C. Parakh, IAS, Director of the 1st respondent -Company, who is Government nominee and Ex-officio-Director for the company is the very foundation for the actions impugned in the writ petition. It is also relevant to notice that the 3rd respondent has also affirmed in his counter that he is representing the interest of the Government of Andhra Pradesh and therefore it can safely be assumed that the Government interest had also a role in the culmination of the impugned actions through the human agency of the 3rd respondent. Thus, looking from any angle, it can be seen, the 1st respondent-company answers the tests laid down in Ajay Hasia's case (supra), particularly, the tests 5 and 6. As pointed out supra, the functions of the 1st respondent company are of public importance and are closely related to Governmental functions. Further, the history of the 1st respondent company would apparently satisfy test No.6 also. In Nixon v. Condon (1931) 286 US 73, it was held that the institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed the functions of Governmental agencies. We have seen above the authorities constituted under, and Corporations established by, statutes have been held to be instrumentalities and agencies of the Government, apart from tens of cases in a long catena of decisions of the Apex Court. From those judgments, it can be said without fear of any contradiction that whatever be the form of an instrumentality or an agency, if it answers the tests laid down by the Apex Court, it can be treated as an instrumentality or an agency of the State and therefore an "authority" within the meaning of that term under Article 12 of the Constitution of India. If the Court finds that a body is an instrumentality or an agency of the State, but which has assumed the garb of a Government company as defined in Section 617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State. What is necessary is that in order to find out whether a Government company is an instrumentality or agency of the State or not, the Court should lift the corporate veil to ascertain whether behind the veil is the face of an instrumentality or an agency of the State. In the instant case, after lifting the corporate veil of the 1st respondent-company and examining its constitution, functions and the public utilities rendered by it, it is seen that it is nothing but an instrumentality and the agency of the State and it answers all the relevant tests. Lastly, even assuming that the 1st respondent-company is neither an agency nor an instrumentality of the State or "an authority" in terms of Article 12 of the Constitution, a writ petition is maintainable against the 1st respondent company in the light of the judgment of the Supreme Court in Air India Statutory Corporation case (supra), Star

Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others, , Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , and several other decisions to follow those decisions. Therefore, I hold that the 1st respondent company is an instrumentality and agency of the State Government and therefore, "an authority" within the meaning of that term under Article 12 of the Constitution of India and therefore writ petition is maintainable.

Question No. 2:

29. As regards the first part of this question, the petitioner has raised two contentions, viz., (i) that that notice of resignation was secured by the 2nd respondent by administering threat and coercion and it was not voluntary, and (ii) that the letter given by him, on 30th September, 1997, to the 2nd respondent is only a notice of resignation and not a resignation itself and therefore, it was open for him to withdraw resignation at any time before the notice period expired.

30. It is well settled that a resignation, in order to be accepted validly in law without legal condemnation, must be voluntary and out of free will of the employee concerned. In other words, a resignation obtained by an employer from his employee by administering threat, coercion, misrepresentation etc., can never be treated as resignation in the eye of law. In *M/s. Southern Roadways Limited, Bangalore v. K. Padmanabhan* 1979 L I C 234, the Karnataka High Court while interpreting the provisions of Section 2-A of the Industrial Disputes Act held that securing a resignation of any employee by the employee by force or against his will, in substance, amounts to termination of the services of the concerned employee. The Court held that the words "or otherwise terminates the services" occurring in Section 2-A of the Industrial Disputes Act covers such cases of the termination brought about in any way whatsoever. It was further held by the Court that the question as to whether in a given case, the resignation was tendered voluntarily or secured under duress is a question of fact. A Division Bench of Bombay High Court while considering Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act in *Shriram Swami Shikashan Sanstha, Nagpur v. Education Officer, Zilla Parishad, Nagpur* and another 1984 Lab IC 100, held as follows:

"We feel that it is a well-settled proposition of law that a forced resignation, which means a resignation not voluntarily given by the employee but is brought about by force, duress or in any other manner by the employer is by the act of the employer. In substance the contract of service comes to an end in such case by the action on the part of the employer. It, therefore, amounts to termination of the service by the employer."

Another Division Bench of the Bombay High Court in *R.D. Survey v. Tola Iron and Steel Company Limited* 1989 Lab IC 1406, considered this aspect again. In that case, the Division Bench of the Bombay High Court held that the word "discharge

or dismissal" will also include in it forced resignation after taking into account its earlier judgment in the case of Shriram Swami Shikashan Sanstha, (supra). It observed:

"Although, it may not be possible for me to go to the extent that a forced resignation will come within the purview of the word "discharge" or "dismissal" but in my opinion, there cannot be any doubt that a resignation obtained by force, coercion or threat etc., and which is not a voluntary one, would come within the purview of the words "or otherwise terminated"."

To the same effect is the opinion of the Court in N.P. Rao v. Tata Iron and Steel Company Limited 1990 BBCJ 149. A Division Bench of this Court also in a recent judgment in Vice-Chancellor, Sri Padmavathi Mahila Viswavidyalayam, Tirupathi and others Vs. V.N. Das, , has opined that a resignation obtained by force by the employer would amount to termination of service.

31. Therefore, the first part of the question that has to be considered is whether the letter given by the petitioner on 30-9-1997 to the 2nd respondent is voluntary or involuntary. In answering this question, the events that took place immediately preceding 30-9-1997 are significant and relevant and they are also necessary to appreciate whether as on 30-9-1997 there existed any circumstance or situation warranting the petitioner to tender his resignation (regardless of the controversy as to whether it was notice of resignation or resignation itself) to the 2nd respondent voluntarily and out of his own volition.

32. The records placed by the 1st respondent-company before the Court show that the management of the 1st respondent company in appreciation of the petitioner's performance and contribution to the growth and development of the company enhanced the salary of the petitioner by Rs. 625/- vide Order dated 8-10-1992, by Rs. 2400/- vide Order dated 2-2-1994, by Rs. 750/- vide Order dated 24-6-1994, Rs. 1250/- vide Order dated 6-10-1995, by Rs. 2500/- vide Order 27-11-1996, Rs. 3000/-vide Order dated 23-8-1997. There is no necessity to extract all the orders made by the Management of the Company enhancing the salary of the petitioner from time to time. According to the Management of the petitioner-company, the petitioner submitted his resignation on 30-9-1997 to wriggle out of the misconduct committed by him and to quit the office honourably. The letter No.CPD/Estt/97, dated 23-8-1997 enhancing the salary by Rs. 3,000/- reads:

"In appreciation of your services and contribution to the Company, Management is pleased to enhance your salary by Rs. 3000/- (Rupees Three Thousand only) with effect from 1st April, 1997 raising your salary to Rs. 19,700/- (Rupees Nineteen thousand seven hundred only) per month from that day.

Management hopes you would continue to contribute towards the growth of the Company."

The words "in appreciation of your service and contribution to the company" are

very significant That means even one month few days earlier to 30-9-1997, the Management of the Company was very much pleased with the performance and contribution made by the petitioner to the growth and development of the company and therefore it thought it appropriate and just to enhance the salary of the petitioner by Rs. 3,000/- in appreciation of such contribution. That means the petitioner was also quite happy and contended being a part of the administration of the 1st respondent company. If that was the position as regards the relationship between the petitioner and the Management of the Company just before the date of alleged resignation on 30-9-1997, what were the circumstances which made the petitioner to be frustrated, discontented and disgusted thereby inducing him to tender resignation on 30-9-1997 and if the Court finds that there was change of circumstances brought about by the management of 1st respondent-company which impelled the petitioner to tender resignation on 30-9-1997, can it be said, having due regard to those circumstances, that the resignation of the petitioner was voluntary and tendered out of his own volition?

33. After perusing the records, it is seen the genesis of the episode which ultimately resulted in the petitioner tendering his resignation letter on 30-9-1997 to the 2nd respondent is traceable to an undated letter written by Sri P.C. Parakh, IAS, Director to Sri L.N. Bangur, Chairman of the 1st respondent-company. A copy of that letter is produced by the petitioner as Annexure 13, at page 34 of the material papers filed at the time of presenting the writ petition. It reads:

"Dear Sri Bangur; Mr. Seetharamaiah, Vice-President (Finance) of the A.P. Paper Mills Limited, visited me at my residence. While leaving my residence, he left behind a carry-bag containing bundles of Rs. 100/-currency notes. Since the carry bag had a picture of Lord Venkateswara, I thought he had brought some Prasadam from Tirupati. Soon after he left my residence, my daughter found that the bag contained currency notes. I immediately called Mr. Seetharamaiah at his residence and asked him to come and pick up the money immediately.

He came back to my residence at about 10-00 p.m., and on enquiry, informed that this money was given by the party to whom letter of intent for conversion of FBC boilers was issued. He indicated that this is part amount of the kickback for the Government Directors, as similar amount has been paid for the promoter Directors.

I am greatly concerned and pained at the entire incident. It is a very clear indication of malfunctioning in the company and practice of kickback is being taken by the officers of the company at various levels from its suppliers.

In the circumstances of the case, I am to request you to kindly immediately withdraw the letter of intent issued for FBC conversion job, call for an emergency meeting of the Capital Goods Committee and institute a thorough enquiry into the FBC conversion contract.

I would suggest that Mr. D. Subba Rao, nominee Director and Sri Kamalakar, nominee of ICICI should form an enquiry committee to investigate the entire affair and suggest remedial measures.

I shall be grateful for your immediate response and action.

With regards,

Yours sincerely, (P.C. Parakh)

Sri L. N. Bangur,

Chairman,

A.P. Paper Mills Limited,

7, St. George Gate Road,

Hastings, Calcutta - 700 002."

The 1st respondent admits the receipt of that letter, though the said letter written by the 3rd respondent is not in the original records placed before the Court. The management of the 1st respondent-company in its counter dated 16-12-1998 adverting to the allegation made by the petitioner in para (6) has stated:

"7. With reference to the allegations in para 6, it is denied that the second respondent demanded the resignation on the evening of 30th September, 1997 as alleged or at all. It is denied that the second respondent threatened that he will terminate the services of the petitioner as alleged or at all. The petitioner knows the reason as to why he tendered resignation. It is submitted that the petitioner had played a mischief of going over to the residence of the third respondent with cover containing currency notes with some ulterior objective. When the petitioner was confronted with this fact, he tendered his resignation voluntarily on the 30th of September, 1997. As a matter of fact the third respondent brought to the notice of the Committee of Directors (Commercial) of the first respondent company, the fact of the petitioner carrying a packet of money to the residence of the third respondent. On the 30th of September, 1997 itself, the Committee of Directors (Commercial) had taken a decision to dispense with the services of the petitioner with immediate effect. The committee further requested the Chairman to form a Sub-Committee of Directors for the purpose of going into the circumstances leading to the placement of order on Cethar Vessels Limited for conversion of Coal Fired Boilers 1 and 2 into Fluidised Bed Combustion. A certified copy of the Extract from the Minutes of the Meeting of the Committee Directors (Commercial) held on 30th September, 1997 is filed herewith. These minutes were considered by the full Board of Directors of the first respondent-Company at a meeting held on 24th of November, 1997 and were noted. A certified copy of the relevant extract from the Minutes of the Meeting of Board of Directors held on 24th November, 1997 is filed herewith. The petitioner as a Senior Executive was fully aware of the deliberations and

proceedings of the Committee of Directors held on the 30th of September, 1997 and tendered his resignation immediately. The petitioner had chosen the way of exit honourably. Having regard to his past services, the management of the first respondent-company also thought it fit to permit him to exit honourably."

From the statements contained in para (7) of the counter, it is quite clear that on the basis of the letter of the 3rd respondent, the Committee of Directors (Commercial) of the Company after necessary deliberation took a decision on 30-9-1997 itself to dispense with the services of the petitioner with immediate effect. It is quite curious to notice at this juncture that according to the Management of the 1st respondent-company, the Committee of Directors (Commercial) having taken a decision to dispense with the services of the petitioner forthwith with immediate effect, requested the Chairman to form a Sub-Committee of Directors for the purpose of going into the circumstances leading to the placement of order on Cethar Vessels Limited for conversion of Coal Fired Boilers 1 and 2 into Fluidised Bed Combustion. Is it not a case of putting the horse before the cart? The further allegation in the counter is that when the Committee of Directors (Commercial) decided to dispense with the services of the petitioner with immediate effect, the petitioner came forward to tender resignation voluntarily for the post to save his skin and to quit the office honourably. This version of the management, I should state, is self-serving and to cover up the illegalities committed by it. It is not that the Committee of Directors (Commercial) on 30-9-1997 took a decision to conduct a departmental enquiry against the petitioner for the alleged misconduct committed by him on the basis of the letter written by the 3rd respondent. If the management wanted to dispense with the services of the petitioner without departmental enquiry, the petitioner tendering resignation to save his skin and to quit the office honourably would not arise. On the other hand, the version of the petitioner that the 2nd respondent on 30-9-1997 demanded the resignation from the petitioner while administering a threat of removal from service in the event of the petitioner failing to do so assumes credibility and acceptability in the fact situation of the case. It is the specific case of the petitioner as set out in the affidavit filed in support of the writ petition that when the 2nd respondent demanded his resignation on 30-9-1997 without disclosing any reasons, but administering threat that he would terminate the services of the petitioner immediately in the event of the petitioner's refusal to resign, the petitioner tendered the resignation letter dated 30-9-1997 without any intention to resign hoping that during the notice period he could buy peace and time and the 2nd respondent would also change his attitude towards the petitioner. The original letter dated 30-9-1997 by the petitioner to the 2nd respondent and produced by the learned Standing Counsel for the respondent company reads:

"To

The Executive Director, Secunderabad M/s. Andhra Pradesh 30-9-1997 Paper Mills Limited,

Secunderabad.

Dear Sir,

I hereby tender my resignation from the services of the Company. As per the Company rules, three months" notice is required. Accordingly I may be kindly relieved.

Thanking you,

Yours sincerely, Sd/- 30-9-1997

From:

Ch. Seetha Ramaiah, Accepted 54, 55, Radhasoami Colony, with effect Sikh Road, from Secunderabad - 500009 1-10-1997 (Close of 30-9-1997) Sd/- 30-9-1997."

As regards the termination of services by way of resignation, Rule 5 of Service Rules for Senior Members of the Staff of Andhra Pradesh Paper Mills Limited, Rajahmundry provides:

"5. Terminations :--(a) Employment of a permanent member of staff shall be subject to termination with one month"s notice in writing or salary in lieu thereof on either side, except in case different term has been agreed to for the termination of employment in appointment order or Service Contract/Agreement. The reason for the termination of services of a member of staff shall be indicated in order of termination by the Authority unless such reason, in the opinion of the Authority, may directly or indirectly lay the Authority open to Criminal or Civil proceedings at the instance of the member of staff:

Provided further that a member of staff resigning from the services of the Company, against whom disciplinary proceedings are pending, may not be relieved from the services until the Departmental proceedings against him are completed.

(b) A member of staff, other than a permanent member of staff may leave or be discharged from the services of the Company without notice or pay in lieu of notice at any time.

(c) The order of termination of services or acceptance of resignation of a member of staff shall be in writing and shall be signed by the Authority and a copy of the same shall be supplied to the member of staff concerned."

But, the clause (13) of the appointment order dated 24-9-1988 appointing the petitioner as Deputy General Manager (Finance) makes a departure from the general Rule 5 as provided therein and it states:

"13. The company shall have the right in its absolute discretion and without assigning any reason to terminate your services at any time by giving you 3 month"s notice in writing or your salary in lieu thereof. You may terminate your

services by giving the Company at any time with 3 month's notice in writing or in lieu thereof paying the Company 3 month's salary."

It is true that in terms of the appointment order, the company as well as the petitioner can terminate contract of service by giving three months notice in writing or paying three months salary. In the context of this rule position and the attendant facts and circumstances of the cases, by no stretch of imagination, it could be said that the letter given by the petitioner to the 2nd respondent on 30-9-1997 was not a notice of resignation, but a resignation itself. The petitioner in his letter specifically mentions that under the company's rules thereby meaning in terms of the appointment order, three months notice is required and accordingly he might be relieved. The language used by the petitioner in his letter cannot leave any doubt in anybody's mind that that letter was only notice of resignation and he wanted to be relieved after notice period. If that is the only fair conclusion that can be arrived by the Court and if the say of the petitioner that he resorted to this procedure to buy peace and time in the context of threat, coercion and blackmail administered by the 2nd respondent is acceptable, it goes without saying that the letter given by the petitioner on 30-9-1997 was not voluntary, but it was secured by the 2nd respondent by administering threat and coercion. It is also absolutely clear that the letter dated 30-9-1997 was only notice of resignation which had to come into effect after the notice period of three months contemplated under clause (13) of the appointment order dated 24-9-1988. Resignation is a voluntary act of an employee. It may be made subject to the conditions laid down by the Rules, if any. Some rules require that the resignation will become effective only when it is accepted by the employer, while some rules require notice for a specified period. It is well settled position in law that the resignation must take effect from the date mentioned in the resignation letter and such date cannot be advanced by accepting resignation from earlier date. It is also well settled that it is open to the employee concerned who has tendered resignation with effect from a future date to withdraw the letter of resignation at any point of time before resignation becomes effective. If the employer rejects the employee's withdrawal and accepts his resignation before the expiry of the period of notice prescribed by the rules, it would amount to termination of service by the employer, which may be quashed by writ of certiorari as held by the Apex Court in Punjab National Bank Vs. P.K. Mittal, . The Supreme Court in Nand Keshwar Prasad Vs. Indian Farmers Fertilizers Cooperative Ltd. and Others, , held:

"11. After giving our careful consideration to the facts and circumstances of the case, it appears to us that the law is well settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date. It has also been held by this Court that it is open to the employee concerned to withdraw letter of resignation before the same

becomes effective."

In that view of the matter and in terms of clause (13) of the appointment order, the resignation tendered by the petitioner in his letter dated 30-9-1997 would have come into effect only with effect from 30-12-1997. However, undoubtedly, the Management has the discretion to terminate the services of the petitioner not only by giving three months notice in writing, but also at any point of time without giving notice but by paying three months salary in lieu of notice. That is exactly the contention of the 1st respondent-company that it chose to terminate the services of the petitioner with effect from 16-10-1997 by order dated 15-10-1997 acting under clause (13) of the appointment order and paying three months salary to the petitioner in lieu of three months notice. If the order dated 15-10-1997 was not preceded by the letter of the 3rd respondent, the decision taken by the Committee of Directors (Commercial) on 30-9-1997 to dispense with the services of the petitioner with immediate effect, the allegations made by the petitioner and the resignation letter submitted by the petitioner on 30-9-1997, the above contention of the 1st respondent would have merited acceptability and credibility, but in view of the facts and circumstances to which reference is already made above, it cannot be said the action taken by the management of the 1st respondent-company in the purported exercise of discretion reserved for it under clause (13) of the appointment order is a bona fide exercise of power. Firstly, it is highly incredible for any responsible and accountable Management of a State Undertaking like the 1st respondent-Company to resort to the discretion vested in it in clause (13) to terminate the services of a high ranking officer of the company thereby letting him out scot free without fixing any accountability for the alleged grave misconduct committed by the petitioner and as reflected in the letter of the 3rd respondent written to the Chairman of the company. Secondly, it is equally high incredible on the part of the 2nd respondent to pass removal order acting under clause (13) of appointment order on 15-10-1997 after having accepted the resignation of the petitioner on 30-9-1997 itself with immediate effect as reflected from the original records. It is pertinent to notice that even according to the respondents, the petitioner was relieved from duty with effect from 1-10-1997 in pursuance of the acceptance of the resignation of the petitioner by the 2nd respondent on 30-9-1997. If that is the admitted stand of the respondent-company, removing the petitioner from service with effect from 16-10-1997 would not arise. Therefore, it is quite clear, the action of the 2nd respondent dated 15-10-1997 terminating the services of the petitioner with effect 16-10-1997 in the purported exercise of the power reserved to the management of the 1st respondent-company under clause (13) of the appointment order is a desperate and mala fide action.

34. The above opinion of the Court is also fortified by the circumstance that the letter given by the petitioner on 30-9-1997 to the 2nd respondent was only a notice of resignation, which had to come into effect after the notice period of three months. However, the 2nd respondent without reason and rhyme and in

breach of service rule, straightaway accepted the resignation without waiting for the expiry of the notice period. Of course, as on 30-9-1997, if the Management of the 1st respondent-company wanted to terminate the services of the petitioner with effect from 1-10-1997 in pursuance of the power reserved to it under clause (3) of the appointment order, it would have independently passed an order terminating the services of the petitioner with effect from 1-10-1997 by paying three months salary in lieu of notice. That is not the position in the instant case. The 2nd respondent having committed serious illegality and irregularity in accepting the resignation of the petitioner with effect from 1-10-1997 passed the impugned order dated 15-10-1997 in the purported exercise of the power reserved for the management to wriggle out of the mess of illegalities committed by him and to give a colour or garb of legality to the mala fide action.

35. The word "mala fide" has two meanings. In the popular sense, it means dishonesty, fraud or ill-will. But, in the legal sense, it has a very broad connotation. When an administrative action is taken out of personal animosity, ill-will or vengeance, action will be struck down on the ground of "malice in fact". Only very rarely this situation occurs. To establish legal mala fide, it is not necessary to prove personal animosity or ill-will or vengeance and even in the absence of these, an administrative action can be struck down as illegal on the ground of bad faith merely because they have acted unreasonably or on improper grounds. Bad faith many a time be treated as interchangeable with unreasonableness and extraneous considerations. Bad faith therefore scarcely has an independent existence as a distinct ground of invalidity. The Supreme Court in *Jaichand Lall Sethia Vs. State of West Bengal and Others*, , held that mala fide exercise of power only means that the administrative or statutory power is exercised for the purposes other than those, for which it is in law intended. The Apex Court further in *Shriram Swaini Shikshan Sanstha, Nagpur v. Education Officer, Zilla Parishad, Nagpur* and another (supra) opined that any action taken for any unauthorised purpose would amount to malice in law. However, it is true that malice has to be pleaded and proved by cogent material evidence as held in *Vijayawada Municipality v. APSE Board*, AIR 1997 SC 87, *Kedar Nath Bahl Vs. The State of Punjab and Others*, , *Keshab Roy Vs. The State of West Bengal*, . In *Parbodh Sagar Vs. Punjab State Electricity Board and Others*, , the Supreme Court held:

".....Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or male fides can only be appreciated from the records of the cases in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances."

36. There can hardly be any direct evidence to prove mala fide. The question whether the impugned action is tainted by mala fide or not has to be answered in the fact situation of each case and preponderance of probabilities and there

cannot be any general test or universal indicium to determine that question either way. Coming to the facts of this case, as held by the Court *supra*, that the action of the 2nd respondent dated 15-10-1997 terminating the services of the petitioner with effect from 16-10-1997 is mala fide can be inferred and perceived from the facts and circumstances of this case. It is well settled by the judgments in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, *State of Assam and Others Vs. Banshidhar Shewbhagavan and Company*, *State of Mysore Vs. P.R. Kulkarni and Others*, etc., that if the administrative or statutory power is exercised in bad faith or for collateral purpose or extraneous consideration, the same would amount to abuse of power or arbitrary exercise of power resulting in the action being vitiated in law.

37. The Apex Court, dealing with the efficacy of declaration as the normal remedy for wrongful dismissal in case of public employees has to state the following in *Sukhdev Singh v. Bhagat Ram* (*supra*).

"121. In (1922) 2 Ch. 490, Lord Sterndale M.R. said:

"The power of the Court to make declarations, when it is a question of determining the rights of two parties to a contract, is now almost unlimited, or limited only by the direction of the Court". The discretion which should guide the Court must be in tune with the modern conditions of life and should result in reversal of present-day attitude. If a job is regarded as analogous to property, it ought to be recognised that a man is entitled to a particular job just as the Courts of Equity acknowledged his right to a particular piece of property. Where a public authority is concerned, this can be implemented by a declaration. In the case of private employment English law has devised no suitable remedy. That this is possible is shown by the example of other countries. The Court must, therefore, adopt the attitude that declaration is the normal remedy for a wrongful dismissal in case of public employees which will only be refused in exceptional circumstances. The remedy of declaration should be a ready-made instrument to provide reinstatement in public sector. Once it is accepted that a man's job is like his property of which he can be deprived of for specific reasons, this remedy becomes the primary one though it will need to be reinforced where private individuals are being sued. The law of master and servant has not kept pace with the modern conditions and the mandate of equality embodied in the Constitution. The law still attaches to the servant a status of inferiority and subjection to his master. Though fundamental reforms can only emanate from the Legislature, the principles fashioned by public law if applied to master-servant relationship can bring about a change in law to accord with the social conditions of the 20th Century".

38. The Supreme Court in *Central Inland Water Transport Corporation case*

(supra) held that clause (i) of Rule 9 of the Service, Discipline and Appeal Rules, 1979 of the Central Inland Water Transport Corporation Limited is void u/s 23 of the Contract Act, 1872, as being opposed to public policy and is also ultra vires Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three month's notice, or pay in lieu of the notice. Such a condition or provision is unconscionable, unfair, unreasonable and opposed to public policy.

39. Looking from another angle also, the impugned actions of the 2nd respondent dated 30-9-1997 and 15-10-1997 cannot be sustained. Since it is held that the 1st respondent is "an authority" with the meaning of that term and therefore the "State" within the meaning of Article 12 of the Constitution of India, the guarantee of equal protection enshrined in Article 14 of the Constitution of India and the postulates of reasonableness, non-arbitrariness and fairness in action flowing therefrom should embrace the entire realm of its action and they would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him, but also in the matter of giving jobs or terminating jobs. In taking this opinion, I am fully fortified by the judgments in *The State of West Bengal Vs. Anwar Ali Sarkar*, , *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, . The requirements of "fairness" implies that even an administrative authority must (i) act in good faith as held in *CIT, Bombay v. Mahindra*, AIR 1984 SCI 182 , and without bias as held in *Chingleput Bottlers Vs. Majestic Bottling Company*, , (ii) apply its mind to all relevant considerations and must not be swayed by irrelevant considerations, (iii) must not act arbitrarily or capriciously and must not come to a conclusion which is perverse or is such that no reasonable body of persons properly informed could arrive at, as held in *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, . The Court would strike down an administrative action which violates any of the three foregoing conditions. Even assuming that clause (13) of the appointment order permits the management of the 1st respondent-company to terminate the services of the petitioners on its subjective satisfaction, that power has to be invoked and exercised judicially because the exercise of that power has the effect of affecting civil rights of the petitioner. In *Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another*, , *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, , it has been held that the use of words, such as "is satisfied", denoting subjective satisfaction, is not conclusive in determining whether the function is quasi-judicial, as was so long supposed, but that if the administrative decision is to affect valuable civil rights, including the liberty of contract, of a person, the administrative and statutory authority must proceed judicially, notwithstanding the subjective nature of the power, and that in such cases, the inquiry must be "consistent with the rules of natural justice..... without bias, without predilection and without prejudice". The result of this decision, thus, is

that a full-fledged quasi-judicial obligation can be inferred, by the application of the "functional test" even where the language used by the statute indicates a decision upon subjective satisfaction. The laissez-faire principle of "hire and fire" is anathema to Article 14 and it opposes to the public policy. Therefore, the impugned action of the 2nd respondent dated 30-9-1997 in utter violation of law and the further action of the 2nd respondent dated 15-10-1997 in the garb of exercising the power reserved for the management under clause (13) of the appointment order, but actually with a mala fide intention to wriggle out of the illegality committed by him in passing the order on 30-9-1997, accepting the resignation of the petitioner are totally arbitrary, unreasonable and they would offend the principle of fairness in action. In other words, reasonableness, non-arbitrariness and fairness in action which are the postulates of Article 14 are violated and such action cannot be sustained in law and the Court is duty bound to condemn and nullify it.

40. Although the petitioner has made several serious personal allegations against the 2nd respondent in the affidavit filed by him in support of the writ petition, the 2nd respondent has not chosen to file his personal counter-affidavit traversing the allegations. The Secretary of the 1st respondent-company who has sworn to the counter-affidavit has no personal knowledge of what transpired between the petitioner and the 2nd respondent on 30-9-1997. In *R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others*, *S. Pratap Singh Vs. The State of Punjab*, and *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, the Supreme Court held that when personal allegations are made against a Minister who is a respondent and such allegations can be refuted by facts within the personal knowledge of the Minister, the counter-affidavit should be filed by the Minister himself and not by the Secretaries or other officers. When allegations of malafide are made against a Minister or any officer, the counter-affidavit must be filed by the Minister or the officer himself, as the case may be, unless there be any other person having personal knowledge of the facts and in the absence of such counter-affidavit, the allegations will go un rebutted. In that view of the matter, the denial of allegations levelled against the 2nd respondent by the Secretary of the 1st respondent company is not a denial in the eye of law because the Secretary has had no personal knowledge of what transpired between the petitioner and the 2nd respondent. Therefore, the allegations made against the 2nd respondent stand un rebutted. In other words, the allegations against the 2nd respondent which are not traversed by him by filing a counter-affidavit must be taken to have been admitted in the light of the judgment of the Supreme Court in *Rowjee*'s case (*supra*).

41. In the result and for the aforementioned reasons, I hold that the impugned action of the 2nd respondent dated 30-9-1997 accepting the resignation of the petitioner and his further action dated 15-10-1997 terminating the services of the petitioner with effect from 16-10-1997 are totally unreasonable, arbitrary and opposed to public policy and suffer from errors of law apparent on the face of the record. The writ petition is accordingly allowed and the impugned Order

No. CPD/ESTT/1997, dated 30-9-1997 accepting the resignation of the petitioner and the termination order dated 15-10-5997 are quashed as illegal and invalid. The petitioner is entitled to all the benefits and advantages, pecuniary and otherwise, flowing from this order. No costs.