
(1984) 04 MAD CK 0062

In the Madras High Court

Case No : Writ Appeal No. 561 of 1983 and Writ Petition No's. 1550 and 11029 of 1981, 9563 of 1983 and 1730 of 1984

C.V. Raman and Others

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 18-04-1984

Acts Referred:

Companies Act, 1956 — Section 291

Constitution of India, 1950 — Article 226

Tamil Nadu Shops and Establishments Act, 1947 — Section 4(1)

Citation : (1985) 57 CompCas 126 : (1986) ILR (Mad) 1 : (1984) 2 LLJ 34 : (1985) 98 LW 560

Hon'ble Judges : Sathiadev, J;Mohan, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for the Appellant; M.R. Narayanaswami, for the Respondent

Judgement

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

2. We would first note the facts leading to Writ Appeals Nos. 561 and 562 of 1983. They arise out of Writ Petitions Nos. 2013 and 2014 of 1979. Writ Petition No. 2013 of 1979 is for a mandamus to direct the first respondent to dispense of the preliminary objection raised by the Management of the Bank of India, Regional Office, Southern Region, represented by the Assistant General Manager, Madras, in regard to the maintainability of T.S.E. Case No. 49 of 1975, of the file of the Second Additional Commissioner for Workmen's Compensation, Madras, in the appeal preferred by the employee, C. V. Raman, u/s 41 of the Act.

3. Writ Petition No. 2014 of 1979 is for prohibition to prohibit the Additional Commissioner from proceeding to take up for disposal T.S.E. Case No. 49 of 1975.

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

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

6. In the affidavit filed in support of the writ petitions, the only point that was raised was that in view of Section 4(1)(c) of the shops Act, the Bank would fall outside the purview of the Act. Section 2(3) of the Act defines "commercial establishment", including a Bank. Section 2(6) defines "establishment", among other things as a "commercial establishment". As the Bank is an establishment under the Central Government, by virtue of section 4(1)(c) of the Shops Act, it would fall completely outside the Act. No employee of the Bank can have recourse of the Appellate Authority constituted u/s 41 of the Act. It was submitted that this contention was fully supported by the provisions of the Banking Companies (Acquisition of Undertakings) Act, 1970, in and by which serve Banks were nationalised including the Bank of India, the first respondent in the above appeals. The employee contended that the Bank of India was not an establishment under the Government under the Government section 41 of the Shops Act will have every jurisdiction to try to the appeal. The matter came up before our learned brother, Ramanujam, J. (See [1984] 64 FJR 140). The learned Judge, on an analysis of the shops Act and on going through the important provisions of the Banking Companies (Acquisition of Undertakings) Act, 1970, hereinafter referred to as the Nationalisation Act, came to the conclusion that the Bank of India was an establishment under the government of India and, therefore, section 4(1)(c) of the Shops Act would apply, which means the Bank will fall out of the purview of the Shops Act. The learned Judge was of the view

that whatever considerations applied in determining whether the bank is an "authority" within the meaning of article 12 of the Constitution of India, those considerations ought to apply in deciding whether an establishment is one under the Government of India or not. He relied principally on *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*, [1975] 47 FJR 214. The learned Judge was of the view that the ruling of this Court reported in *Madras State Electricity Board v. Commissioner of Labour*, [1960] 19 FJR 465, *Madras State Electricity Board v. Commissioner of Labour*, [1961] I LLJ 297 and *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, , cannot be said to lay down the correct law after the decision by the Supreme Court in *Sukhdev Singh's* case (supra). On an analysis of the decision of the Decision of the Supreme Court, the learned judge held that two propositions would clearly emerge :

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

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

Thus, the learned Judge allowed the writ petitions.

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

8. A preliminary objection was raised on behalf of the writ petitioner that the State Bank of India would fall under the exemption clause contained u/s 4(1)(c) of the Shops Act and, therefore, the Act would not apply to the State Bank of India. Another objection was raised that the work of the respondents herein involved travelling and, therefore, Chap. III of the said Act which deals with hours of work, holidays and payment of overtime wages would not apply to

them. On the second of the objections, the Commissioner held that the respondents herein were not persons whose work involved travelling as travelling under the specific orders of the employer to do work outside the branch would not convert an office job into one that involves travelling. On the first of the objections, namely, the applicability of section 4(1)(c) of the Shops Act to the State Bank of India, after an analysis of the relevant provisions of the Act and on a reference to relevant case-law, he rejected the contention that the State Bank would fall u/s 4(1)(c) of the Shops Act. In the result, he held that all the provisions of the Tamil Nadu Shops and Establishments Act, 1947, would apply to the respondents herein, who belonged to the Junior Management cadre of the State Bank of India and who are not occupying the posts of Branch Managers or Field Officers. It is under these circumstances that this writ petition has come to be preferred for certiorari to quash the order of the Labour Commissioner, Madras.

9. Writ Petition No. 11029 of 1981 : The State Bank of India is the petitioner herein. This writ petition is against the order of the Deputy Labour Commissioner-II, Madras. The respondent started his career as a clerk in the Imperial Bank of India, way back in 1955. By dint of his hard work, he rose to the position of an Officer Grade II in 1965.

10. When he was Branch Manager at Tirupattur (Ramanathapuram District) it was brought to the notice of the writ petitioner-bank that during his tenure as Field Officer in Sattur branch and also as Branch Manager at Tirupattur branch, he committed various acts of misconduct, which are prejudicial to the interests of the bank.

11. By a charge-sheet, dated 24th November, 1978, sixteen charges were levelled. He submitted his explanation. His explanation was found not satisfactory. Hence the bank decided to hold an enquiry into the charges against the second respondent. The enquiry officer gave his findings, dated 6th April, 1979, holding that the charges were proved. The Disciplinary Authority considered the findings of the Enquiry Officer and imposed the penalty of removal from service. He passed the orders on 10th September, 1979, removing him from service.

12. Against the said order of removal, he preferred an appeal on 12th October, 1979, to the members of the Local Board of the bank. At its meeting held on 22nd November, 1979, the Local Board of the bank considered the appeal. It resolved that there was no justification to interfere with the findings recorded and the punishment imposed by the disciplinary Authority. Accordingly, the appeal was dismissed. Thereupon, he preferred an appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act. That was numbered as T.S.E. Case No. 60 of 1979. It was urged that in view of the exemption clause contained u/s 4(1)(c) of the Act, the provisions of the Shops Act would be inapplicable and, therefore, the appeal was incompetent. The appeal of the second respondent was allowed by the order, dated 14th July, 1981. Hence the present writ petition.

13. Writ Petition No. 9563 of 1983 : Here again, it is the State Bank of India that is the petitioner. The facts are as under. The second respondent was working as an Assistant Security Officer in the petitioner-bank. During June and October, 1971, he was stated to have committed certain serious irregularities, in the matter of claiming expenses, alleged to have been incurred on account of the visit of V.I.Ps. Therefore, by a charge-sheet, dated 4th December, 1972, fifteen charges were leveled against him. The second respondent was governed by the State Bank of India (Officers and Accountants) Service Rules. Though under the service Rules applicable to him, an enquiry was not contemplated, having regard to the facts, the bank decided to hold a full-fledged enquiry. Accordingly, a domestic enquiry was held. The Enquiry Officer gave his findings, holding that all the charges, except a portion of one charge, were proved. After the receipt of the finding, the second respondent was asked to appear before the Chief General Manager for a personal hearing. After this, by letter dated 12th May, 1976, the second respondent was informed that it was proposed to inflict the punishment of dismissal. He was called upon to show cause why the said punishment should not be inflicted. He made a representation on 15th June, 1976. After considering his representation, the Local Board of the writ petitioner-bank at its meeting held on 7th July, 1976, came to the conclusion that the dismissal was the proper punishment. Therefore, orders were passed on 21st July, 1976, dismissing him from bank service. Aggrieved by that order, the second respondent preferred an appeal u/s 41(2) of the Shops Act. The said appeal was numbered as T.S.E. No. 4 of 1979, though, originally, the matter was heard by Deputy Labour Commissioner-II, he did not pass any orders. Subsequently, the first respondent was notified as the Appellate Authority and the appeal of the second respondent came to be transferred to the first respondent. In the course of hearing before him, it was urged that the petitioner-bank is an establishment under the Central Government. Therefore, by virtue of section 4(1)(c) of the Tamil Nadu Shops and establishments Act, the said Act would not apply to the second respondent. The further objection raised was that the second respondent was holding a position of management and governed by service rules and, therefore, he could not invoke the provisions of the said Act. On a consideration of the matter, the first respondent overruled both the objections and set aside the order of the petitioner-bank by its order dated 11th August, 1983. It is to quash the same that this writ petition has come to be preferred.

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

15. Sri N. G. R. Prasad, learned counsel appearing for the appellant in Writ Appeals Nos. 561 and 562 of 1983, C. V. Raman, an employee of the Bank of India, submits as under : After referring to section 4(1)(c) of the Shops Act, it is urged that the meaning of Commercial establishment came to be decided in Madras State Electricity Board v. Commissioner of Labour, [1960] 19 FJR 465. In that case, the question arose whether the clerical department of the then Madras Electricity Board would fall under the definition of "establishment under the Government". The Court found that there was no direct relationship of master and servant between employees of those departments and the Electricity Board. To the same effect is the ruling reported in Madras State Electricity Board v. Commissioner of Labour (supra). In Canara Bank v. Appellate Authority under Kerala Shops and Establishments Act, [1981] 59 FJR 92, a Full Bench of the Kerala High Court considered the question whether the Canara Bank and the Bank of India - two Nationalised Banks - were establishments under the Central Government and as such would be exempt from the provisions of the Kerala Shops and Establishments Act, 1960. u/s 3(1)(c), in that case, it was held, the control of the Government over the Nationalised Banks is limited only to matters of policy. The Corporation, as a separate legal entity, is entitled to acquire, hold and dispose of property. It is liable to Income Tax. The expression "establishment" used in section 3 cannot be equated with an undertaking. These Banks have their own staff pattern, their own conditions of service not connected with the Government or the Service Rules of the Government and are not establishments under the Central Government. The learned counsel places strong reliance on this ruling and contends that the failure on the part of the learned single Judge to apply this ruling to the facts of this case has resulted in a wrong decision.

16. The next case relied on by the appellant is Corporation of City of Nagpur v. Gopal Shastri Narayan Ayyar, [1977] 50 FJR 231. The case arose under the Bombay Shops and Establishments Act. It was held that the Bank of Baroda, which was a Nationalised Bank, was not exempt from the provisions of the Shops and Establishments Act as being an establishment of the Central Government. That ratio will equally apply to the facts of this case. The learned counsel next cites the ruling in Civil Revision Petition No. 2632 of 1979. The decision in that case was rendered by one of us. It was held there that the property belonging to a Nationalised Bank cannot be equated to the holdings of the Government of India.

17. As to what is the meaning of a Government company can be gathered from the ruling of the Supreme Court in Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, . In the light of that case, certainly a Nationalised Bank is not a Government company.

18. In a case which arose before the Karnataka High Court, which is reported in Karnataka Provident Fund Employees' Union v. Additional Industrial Tribunal, Bangalore, [1983] 62 FJR 290, it was held that the activity of the Provident Fund

Organisation is essentially non-governmental. If that were the position with regard to an organisation, the case of the Nationalised Bank could be no better.

19. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Supreme Court has explained the meaning of "agency" or "instrumentality" for the purpose of article 12 of the Constitution of India. Therefore, if those cases are applied, certainly the nationalised banks cannot be held to be either an "agency" or an "instrumentality".

20. In *Biharilal Dobray Vs. Roshan Lal Dobray*, , the Supreme Court held that the Uttar Pradesh Education Committee was held to be an alter ego, having regard to the control exercised by the Central Government. But here the position is entirely different, By a reading of article 12 of the Constitution of India, it is clear that it makes reference to other authorities. It has no reference to institutions like the present Bank.

21. The learned counsel for the appellant draws our attention to sections 3(4) and 4 of the Nationalisation Act. Both read together, according to him, would clearly establish the indisputable fact that a Nationalised Bank is an institution, having a separate entity. He also draws our attention to sections 7 and 11 of this Act and then contends that the banking company is assessable to Income Tax u/s 11 is a point in favour of the employee to hold that the exemption provisions of the Shops Act would not apply. The learned single Judge, according to the learned counsel for the appellant, erred in applying those cases to decide the meaning of an "authority" under article 12 of the Constitution of India to an "establishment" under the Government of India. Certainly, it cannot be contended that any Nationalised Bank is an authority subordinate to the Government of India. Otherwise, its power as a legal institution and as a legal person to acquire, to hold and to dispose of property is rendered nugatory.

22. Sri M. R. Narayanaswami, learned counsel appearing for the Bank., contends that the approach to this important legal question must be in the following manner. Section 2(3) of the Shops Act defines "commercial establishment". In that, it has included "a bank". Section 2(6) defines "establishment" as such. This Act is of the year 1947. Before that, there was only the Reserve Bank Of India Act. That was later on taken over by the Government. It was only by the Reserve Bank Transfer to Public Ownership Act, Central Act 62 of 1948, which came into force on 1st January, 1949, the Government of India started exercising control over other Banks. It is under this background the exemption clause contained u/s 4 has to be examined. Section 4(1), clauses (a) and (b), exempt individual, while section 4(1)(c) exempts an establishment under the Government. In other words, an establishment as such is exempt which is found to be under Government of India. Once the institution as a whole is exempt, it is irrelevant to find out whether there exists a relationship of master and servant between the Government of India and the employees of the bank. Therefore, the crucial test to be applied is whether a Nationalised Bank is an "establishment" under the Government of India. To establish this proposition, he would mainly rely on the

provisions of the Nationalisation Act. The learned counsel for the Banks invites our attention to section 2(d), which defines the corresponding provisions. u/s 3, the meaning of "vesting" is dealt with. No doubt, section 3(4) of the Act states that a Nationalised Bank is a body corporate. That cannot be little a Nationalised Bank being under the Central Government. The investing takes place u/s 4. u/s 7, the location of the Head Office and the management must be as per the directions of the Central Government. u/s 8, the banks are to be guided by the Central Government. u/s 10(7), the profits of the bank are to be kept by the Central Government. u/s 10(7), the profits of the banks are to be transferred to the Central Government. Section 14 lays down that a custodian of a banks is a public servant with in the meaning of the Indian Penal Code. Then again, there is a scheme framed u/s 9 of this Act. That lays down the measure of control by the Central Government over these banks. In *Sukhdev Sing v. Bhagatram*, [1975] 47 FJR 214, the Supreme Court formulated the test for holding the Life Insurance Corporation of India and the Oil and Natural Gas Commission as "authority". The learned counsel would draw our particular attention to the judgment of Justice Sri Mathew in Para. 109 and the judgment of the Chief Justice Sri Ray in Paras. 39, 44 and 50. In Para 50 of the judgment, according to him, the Life Insurance Corporation of India was held to be an authority within article 12 of the Constitution of India. A close analysis of the Life Insurance Act of 1956 and the Nationalisation Act of 1970, leaves no room for doubt that a Nationalised Bank is an establishment under the Government of India. It is important to note, according to the learned counsel, Para 67 of the said judgment where it has been laid down that the employees of these Corporations or Commissions were not the employees of the Union or the State. They could not be elevated to that status and, therefore, article 311 was held inapplicable to them. Those tests to hold the institutions like the Life Insurance Corporation of India as an authority under article 12 of the Constitution of India, should equally apply to the Nationalised Banks, in view of the great similarity between the Life Insurance Corporation of India Act and the Nationalisation Act. The learned single Judge was right in approaching the issue involved in this case in that way.

23. The same line or reasoning was adopted by the Supreme Court in *Som Prakash Rekhi v. Union of India*, [1980] 57 FJR 370. Likewise, in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , it was held that even a society registered under the Societies Registration Act was an authority under article 12 of the Constitution of India. The test to be adopted was stated as follows :

"The true owner is the State, the real operator is the State and the effective Controllorate is the State and accountability for its action to the community and the parliament is of the State."

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

24. In *U.P. State Warehousing Corporation v. Tyagi*, [1970] 38 FJR 39, the Agricultural Produce (Development and Warehousing) Corporation, had dismissed an employee without following the procedure laid down in its regulation 16(3). It

was held that no declaration to enforce a contract of personal service will normally be granted. The remedy of such a person would be to fill a suit for damages. If, therefore, according to him, a Nationalised Bank falls outside the purview of this Act, no appeal could be entertained by the authority constituted u/s 41 of the Shops Act.

25. In *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, , the Rajasthan Electricity Board was held to be an authority under article 12 of the Constitution of India. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , how the Government could act through its agencies has been explained. The same principle should be applicable to the facts of this case. That case also explained the case in Supreme Court in *Heavy Engineering Mazdoor Union v. State of Bihar*, [1967] 32 FJR 429. The question in that case was whether the words "under the authority" could mean "pursuant to the authority". Therefore, whether the Heavy Engineering Corporation Ltd. can be said to be carrying on the business on the authority of the Central Government ? The answer to this question was "no", because the Corporation was carrying on business by virtue of the authority derived from its memorandum and articles of association and not by reason of any authority granted by the Central Government. The learned counsel states that having regard to these decisions, there could be an establishment under the control of the Government, even though it is a statutory Corporation. States further that the tests applied to decide an authority under article 12 have also been allied to Nationalised Banks as seen from the decision in *Lachhman Dass Aggarwal v. Punjab National Bank*, [1978] 52 FJR 306, with regard to the Punjab National Bank. There the scope of section 11 of the Nationalisation Act has also been discussed in para. 10 at page 314. He also draw our attention to the other cases reported in *Sukhdev Ratilal Patel Vs. Chairman, Bank of Baroda and Another*, , and *Miss P. S. Geetha v. Central Bank of India, Bombay*. [1978] L & IC 1271. He refers to Third New Webster's Dictionary, Shorter Oxford English Dictionary, Stroud's Judicial Dictionary and Grolier International Dictionary in regard to the word "under".

26. In *Hindustan Machine Tools Workers and Staff Union v. Hindustan Machine Tools Ltd.*, [1982] 60 FJR 186, the words "under the control of Government of India" came up for discussion under the Industrial Establishments (National, Festival and Other Holidays) Act. According to him, section 11(c) of the Andhra Pradesh Factories Act corresponds to section 4(1)(c) of the Shops Act and the ratio of the judgment would, therefore, apply. The learned counsel for the appellant after providing us with the corresponding provisions of the Shops and Establishments act of the various States, submits that in *Corporation of City of Nagpur v. Gopal Sastri Narayan Ayyar*, [1977] 50 FJR 231, the working of section 4 of the Bombay Shops and Establishments Act has been dealt with. There is a vital distinction between the word "of" and "under" Central Government. Therefore, that decision cannot be of any use.

27. The sheet-anchor of the appellant's argument proceeds from the decision in *Canara Bank v. Appellate Authority*, [1981] 59 FJR 92 (Ker). That case bristles with incorrectness. When the word "establishment" has been defined under Kerala Shops and Establishments Act, there is nothing to go for the dictionary meaning. In para. 7 of that judgment, the word "under" has been read as "of". In fact, there is an earlier Full Bench judgment of the very same High Court as seen from *Jacob Philip Vs. State Bank of Travancore and Others*, , where, u/s 3 of the Kerala Land Reforms Act, the meaning of Corporation owned or controlled by the State, came to be laid down holding that the State Bank of Travancore is a Corporation owned or controlled by the State. This Full Bench judgment has not been notes at all in this ruling.

28. The learned counsel for the appellant invites our attention to Bernard Schewartz's legal Control of Government, 1972 Edn., pages 39 and 40, as to nationalisation. He also cites a passage in Wad's Administrative Law, page 139, dealing with public corporation. He refers to Black's Law Dictionary. 5th Edn. at page 824, wherein the word "nationalisation" is dealt with as against the word "denationalisation" at page 320. The learned single Judge was correct in his approach with regard to the appreciation of the Full Bench decision of the Kerala High Court.

29. In *Biharilal Dobray Vs. Roshan Lal Dobray*, , with regard to the control exercised by the Central Government, the Uttar Pradesh Education Committee was held to be alter ego. This case does not help in deciding the matter in issue.

30. No doubt, in *Madras State Electricity Board v. Commissioner of Labour*, [1960] 19 FJR 465, it was the clerical department of the industrial undertaking namely, the Madras Electricity Board, which is included u/s 2(12)(iii) of the Shops Act. Whether that would be exempt u/s 4(1)(c) was the point to be considered. Therefore, it was not the entire establishment as such, which came up for consideration. That decision does not apply to the facts of the present case. Therefore, the theory of master and servant relationship existing between the Government and the employees need not detain us.

31. Originally banking companies were governed by Part X-A of the Companies Act, 1913. In 1949, the Banking Regulation Act was enacted. Therefore, Part X-A was repealed. Under the Banking Regulation Act, the Reserve Bank exercised several controls. By the Nationalisation Act (Central Act 5 of 1970), if a change was brought about in the structure of the bank itself, can it still be said the Shops Act, 1947, would apply ? This should be the approach. Therefore, it is futile on the part of the appellant to contend that the Government has control over Nationalised Banks.

32. Sri N. G. R. Prasad, learned counsel for the appellant, further submits that section 4(1)(c), when it talks of an establishment under the Government, must be construed as equal to a department of the Government. It must be utterly dependent on Government of India in the matter of day-to-day administration.

An establishment under the Government is different from an establishment under the control of the Government. He requests us to note the distinctive phraseology used in article 12 and article 58(2) of the Constitution of India and it is the same interpretation that was placed in *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, . That was followed in *Madras State Electricity Board v. Commissioner of Labour (supra)*. All these case held that "under the Government" means "a department of the Government". Those decisions should be applied to these cases. Strong reliance is placed on the decision in *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, , particularly the passage occurring from para. 29 onwards. As a matter of fact, the ruling in *G. Narayanaswami Naidu Vs. C. Krishnamurthi and Another*, , was noted in *Manohar Nathurao Samarth Vs. Marotrao and Others*, . The learned counsel also cites Seervai's Constitution of India, and also Seervai's Constitution of India, 2nd Edn., Vol. II, Page 1155. He also draws our attention to the corresponding provisions of the Shops and Establishments Act in the various States like Kerala, Karnataka, Andhra Pradesh, Madhya Pradesh, Punjab and Bombay. The specific mention of the Reserve Bank in section 4(1)(c) is a relevant point, according to appellant's counsel. If really the intention was to exempt the banking establishments from the purview of the Act, there is no justification for mentioning the Reserve Bank of India alone.

33. Further citations on behalf of the appellant are *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, , *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, , *D.R. Gurushantappa Vs. Abdul Khuddus Anwar and Others*, and *Motsingh Vs. Bhaiyyalal*, ; it is urged that the word "under" means "subordination" to the Government. It is this interpretation which has to be placed in this case. So construed, it cannot be held that the Nationalised Banks are subordinates of the Government having regard to the fact there is no absolute control over their day-to-affairs.

34. Acting under the power conferred by Central Act 5 of 1970, the Indian Overseas Bank has framed "Discipline and Appeal Regulations". They do not provide for an appeal to the Central Government. That is one of the tests laid down in *Biharilal Dobray Vs. Roshan Lal Dobray*, . The failure to provide for such an appeal to the Central Government is again a point in his favour.

35. Sri M. R. Narayanaswami, learned counsel for the State Bank of India, petitioner in other writ petitions, draws our attention to the following important provisions of the State Bank of India Act of 1955 :

"Section 3 - "Establishment of the State Bank."

Section 4, particularly the proviso dealing with "Authorised Capital".

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

It is also stated therein that all the shares in the capital of the Imperial Bank

shall be transferred to and vest with the Reserve Bank.

36. Section 10(1) deals with transferability of shares. However in sub-section (2), it is clearly stated :

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

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

Section 16(2) talks of the Bank having Local Head Offices in Bombay, Calcutta and Madras.

37. Section 18, according to the learned counsel, is an important section which has a bearing.

That section states as follows :

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

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

38. Section 19 deals with the composition of Central Board; the power of appointment of Directors under clauses (a), (b), (ca); (cb); clause (d) contemplates Director from various sources.

40. All these Directors are appointed only by the Central Government. In this connection, it is worth while to note Part X-A of the Banking Regulation Act, 1949.

41. Section 20 talks of the term of office of the Chairman. That is to be fixed by the Central Government.

Sub-section (1A) deals with termination of office by the Central Government.

42. Section 21 in clause (c) deals with the nomination of six members of a Local Board by the Central Government.

43. Section 24 deals with removal from office of Directors by the Central Government.

44. Section 25 states even casual vacancies are to be filled by the Central Government.

45. Section 27(2) deals with "Salary of Chairman."

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

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

Under Section 35, it is stated thus :

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

47. u/s 37, it is stated thus : "Reserve Fund : State Bank shall establish a reserve fund consisting of the amount held in the reserve fund of the Imperial Bank transferred to the State Bank and such further sums as may be transferred to it by the State Bank out of its annual net profits before declaring a dividend."

48. Sections 40, 49 and 50 also are relevant. These various provisions suggest immense or extensive control by the Central Government. The learned counsel cites the decision in *V. Ramiah Vs. State Bank of India*, , in this connection and also the decision in *Som Prakash Rekhi v. Union of India*, [1980] 57 FJR 370.

49. In *B.S. Minhas Vs. Indian Statistical Institute and Others*, , where the Supreme Court held that the Statistical Institute of India was "authority" under article of 12 of the constitution, in para. 21 of its judgment at page 73, it had applied the test of deep and pervasive control of Government of India. It is that test which will be important. If, therefore, on an analysis, the Court comes to the conclusion that there is a deep and pervasive control by the Government of India over the State Bank, certainly the Bank could claim exemption u/s 4(1)(c) of the Shops Act.

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

51. State Bank of India is a body corporate. Its shares are freely transferable. Among the Board of Directors, one of them can be from public. On a reading of the entire State Bank of India Act of 1955, it is clear that except for a capital structure and a policy control by the Government, there is no other control. The learned counsel draws our attention to the decision reported in *Sukhdev Singh v. Bhagatram* (supra).

52. It has been held in *Ramana Dayaram Shetty v. International Airport Authority* (supra), that financial assistance is one of the tests. That test is helpful to the instant case. He also cites the decision in [1980] 57 FJR 1, and contends that the interpretation placed by the petitioner cannot be accepted.

53. According to the learned counsel for the second respondent in Writ Petition No. 11029 of 1981, unless the control by the Government of India is full and complete, it is not possible to say that the State Bank of India is under the

control of Government. In law, if there is accountability even to one shareholder, it would mean that the Bank is not under the control of the Government. To support this argument, he makes a reference to Ramaiya's Company Law, page 257, para. 5.38. If really the directors are in fiduciary capacity to shareholders, their appointments by Government are immaterial. In this connection, the learned counsel referred to Ramaiya's Company Law - commentary on section 291 of Companies Act (at page 622 of the latest edition).

54. Sri A. Ramachandran, learned counsel for the contesting respondent in Writ Petition No. 1550 of 1981, states that the existence of master and servant relationship, which is one of the important tests to be adopted in the case has been correctly held to be applicable in *Madras State Electricity Board v. Commissioner of Labour* (supra). If really section 4(1)(c) of the Shops Act when it was amended, omitted railway and retained Reserve Bank of India, that is a matter for consideration. Then again, the Government of Tamil Nadu itself granted exemption on the assumption that the Act is applicable. Therefore, if the act has been so understood, there is no justification to hold to the contrary. This apart, section 4(1)(c) of the Shops Act neither uses the word "instrumentality" nor "agency".

55. Part IV of the Constitution when it talks of "State", it means "sovereign power". The Government of India has no ownership of the State Bank of India. It is thus argued that the State Bank of India will not fall within the purview of exemption u/s 4(1)(c) of the Shops Act.

56. In reply, Sri M. R. Narayanaswami, learned counsel for the State Bank of India, again draws our attention to the decision in [1964] II LLJ 311 and also *Ramiah (V.) Vs. State Bank of India*, . On the strength of these two cases, it could be held that there could be an employment in a public corporation. Such an employment would be "public employment" not being governed by article 311 of the Constitution. In such a case, an endeavour must be made to find out the proper and appropriate meaning of the word "under" and apply it to the situation. The word "under" is not defined in the Shops Act. The word "under" occurring in section 4(1)(c) of the Shops act must be construed in such a way as to be harmonious with other provisions of the Act.

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

58. We shall consider the position of -

- (1) Nationalised Bank; and
- (2) the State Bank of India;

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

59. The meaning of "commercial establishment" can be gathered from section 2(3). That reads as follows :

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

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

60. The word "establishment" has been defined u/s 2(6) of the Act. That is as follows :

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

61. The exemption clause, which is vital for our case, is contained u/s 4(1). Clause (c) is relevant. That is extracted below :

"4. (1) Nothing contained in this Act shall apply to -

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

Two striking features of this exemption clause are -

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

(2) the omission of the words "the Federal railway Authority".

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

62. To find out whether a Nationalised Bank will fall under the exemption clause, it is necessary on our part to make a reference to the Banking Companies Acquisition and Transfer of Undertakings Act of 1970 (Central Act 5 of 1970). Section 2(d) defines "'corresponding new Bank" in relation to an existing Bank".

63. This means the body corporate specified against the Bank in Col. 2 of the First Schedule. "Existing Bank means : "a banking company specified in Col. 1 of the First Schedule."

Section 3 deals with "establishment" of corresponding new Banks and business thereof".

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

64. The general effect of vesting is stated in section 5 as follows :

"5. General effect of vesting. - (1) The undertaking of each existing Bank shall be deemed to include all assets, right, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property as were immediately before the commencement of this act in the ownership, possession, power or control of the existing Bank in relation to the undertaking, whether within or without India, and all books of accounts, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the existing Bank in relation to undertaking.

(2) If according to the laws of any country outside India, the provisions of this act by themselves are not effective to transfer or vest any asset or liability situated in that country which forms part of the undertaking of an existing Bank to, or in, the corresponding new Bank, the affairs of the existing Bank in relation to such assets or liability shall, on and from the commencement of this Act, stand entrusted to the Chief Executive Officer may exercise all powers and do all such acts and things as may be exercised or done by the existing Bank for the purpose of effectively transferring such assets and discharging such liabilities.

(3) The Chief Executive Officer of the corresponding new Bank shall, in exercise of the powers conferred on him by sub-section (2), take all such steps as may be required by the laws of any such country outside India for the purpose of effecting such transfer or vesting, and may either himself or through any person

authorised by him in this behalf realise any asset and discharge any liability of the existing Bank.

(4) Unless otherwise expressly provided by this Act, all contracts deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the commencement of this Act and to which the existing Bank is a party or which are in favour of the existing Bank shall be of full force and effect against or in favour of the corresponding new Bank, and may be enforced or acted upon as fully and effectual as if in the place of the existing Bank.

(5) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any business of the undertaking which has been transferred u/s 4, is pending by or against the existing Bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the existing Bank or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the corresponding new Bank.

(6) Nothing in this Act shall be construed as applying to the assets, rights, powers, authorities and privileges and property, movable and immovable, cash balances and investments in any country outside India (and other rights and interests in or arising out of such property) and borrowings, liabilities and obligations of whatever kind subsisting at the commencement of this Act, of any existing Bank operating in that country, it is not permissible for a banking company, owned or controlled by Government to carry on the business of banking there."

65. Section 6 deals with payment of compensation :

"6. (1) Every existing Bank shall be given by the Central Government such compensation in respect of the transfer u/s 4 to the corresponding new bank of the undertaking of the existing bank as is specified against each such bank in the Second Schedule.

Section 7. Head office and management. - (1) The head office of each corresponding new Bank shall be at such place as the Central Government may by notification in the official Gazette specify in this behalf and until such place is so specified shall be at such place at which the head office of the bank is on the commencement of this Act located.

(2) The general superintendence, direction and management of the affairs and business of a corresponding new bank shall vest in a board of directors which shall be entitled to exercise all such powers and do all such acts and things as the corresponding new bank is authorised to exercise and do.

(3) The Central Government shall in consultation with the Reserve Bank constitute the First Board of Directors of a corresponding new bank consisting of not more than 7 persons to be appointed by the Central Government and every

Director so appointed shall hold office until the Board of Directors of such corresponding new Bank is constituted in accordance with the scheme made u/s 9.

(4) Until the First Board of Directors is appointed by the Central Government under sub-section (3), the general superintendence, direction and management of the affairs and business of a corresponding new Bank shall vest with the Custodian.

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

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

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

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

* * * * Section 9. (4) The Central Government may, after consultation with the Reserve Bank, make a scheme to amend or vary any scheme made under sub-section (1).

* * * * Section 11. Corresponding new Bank to be deemed to be an Indian company.

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

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

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

66. Whether these new Banks constituted under Central Act 5 of 1970 will fall within the scope of article 12 of the Constitution of India had come up for consideration in various cases. Before we deal with the cases, it is necessary to note as to what article 12 states in extending Fundamental Rights vis-a-vis the authorities. That article explains the definition of "State" which normally would mean "sovereign power" as under :

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

67. In *Manoj Kanti Basu v. Bank of India*, 419, the Calcutta High Court held that the Bank of India would be an authority under article 12 of the Constitution. A similar view was expressed in *K. Satyanarayana Murthy Vs. Syndicate Bank and Another*, , by the Andhra Pradesh High Court as regards Syndicate Bank. In *Sukhdev Ratilal Patel Vs. Chairman, Bank of Baroda and Another*, , the Gujarat High Court took also the same view as regards Bank of Baroda. *Lachhman Dass Aggarwal v. Punjab National Bank*, [1978] 52 FJR 306, dealt with the Punjab National Bank. That is a decision of the Punjab High Court. In *Miss P. S. Geeta v. Central Bank of India*, [1978] LIC 1271, the Andhra Pradesh High Court was concerned with the Central Bank of India. That Court came to the conclusion that such a bank would fall within the meaning of "authority" under article 12.

68. It may be stated at this stage that in *Lachhman Dass Aggarwal v. Punjab National Bank* (supra), the following observations are found (at p. 314 of 52 FJR) :

"Applying the principles laid down in *Sukhdev Singh v. Bhagatram Sardar Raghwanishi*, [1975] 47 FJR 214, there can be no doubt that the Punjab National Bank is an "authority" within the meaning of Article 12 of the Constitution. The Punjab National Bank, as distinguished from the Punjab National Bank Ltd., is not a company incorporated pursuant to the provisions of the Companies Act, but is a body created by statute, namely, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It is wholly owned by the Central Government. The general supervision, direction and management of the affairs and business of the Punjab National Bank are vested in a board of director appointed pursuant to a scheme made by the Central Government has the power to modify the scheme from time to time. The Central Government is entitled to give directions to the Bank. The audit report is to be submitted to the Central Government and the Central Government is under an obligation to lay the report before both the Houses of Parliament. The profits of the bank are required to be transferred to the Central Government. The officers and employees of the bank are granted immunity against losses and expenses incurred in connection with the discharge of their duties. It is clear from these provisions that the Government, instead of itself carrying on the business of banking, as it certainly is entitled to, has chosen to carry on the business through the instrumentality of the Punjab National Bank and other "corresponding new banks", created by the statute and wholly owned by the Government. It is "State action" through bodies corporate, owned "body and soul" (if such an expression may be used) by the State. We have no doubt that the "new corresponding banks" are authorities within the meaning of article 12 of the Constitution. Our view is supported by a decision of the Gujarat High Court in *Sukhdev Ratilal Patel Vs. Chairman, Bank of Baroda and Another*, , and that of learned Single Judge of this Court in *Chaman Lal Gupta v. Punjab National Bank* (R.S.A. No. 1797 of 1973).

Sri D. S. Nehra, learned counsel for the bank, argued that the bank continued to be a company and relied upon section 11 of the Act, which provides that for the

purposes of the Income Tax Act, 1961, the bank shall be deemed to be an Indian company. The submission of Sri Nehra is entirely without substance. Sri Nehra is confusing Punjab National Bank with the Punjab National Bank Ltd. While Punjab National Bank Ltd. was a company incorporated pursuant to the provisions of the Indian Companies Act, the Punjab National Bank, the corresponding new bank, is a creature of statute. The fact that it is required to be assessed to Income Tax as an Indian Company does not make it a company incorporated under the Indian Companies Act. In fact, if it was a company under the Companies Act, section 11 of the Act would be redundant."

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

69. It is the contention of Sri N. G. R. Prasad, the learned counsel for the appellant, that the tests applied to determine whether a particular authority is an authority under the Government of India, have no relevancy whatsoever to determine an establishment under the Central Government. In this case what is necessary to be established is that there must be a relationship of master and servant. It was that test which was adopted in a case arising under the Shops Act in Madras State Electricity Board v. Commissioner of Labour (supra). A similar view was taken in [1961] I LLJ 297. The same principles have been adopted by a Full Bench of the Kerala High Court in Canara Bank v. Appellate Authority (supra) and Jacob Philip Vs. State Bank of Travancore and Others, .

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

71. We have already extracted article 12 of the Constitution of India. In view of this article, the Courts were concerned in determining when an authority could be said to be "under the control of Government of India". It cannot be gainsaid that this definition of "State" is only for the purposes of Part III of the Constitution, namely, the Fundamental Rights. Part XIV of the Constitution of India which deals with the Service under the Union and the Stated, is inapplicable to a servant under the authority falling under article 12 of the Constitution. That is evident from the language of article 311, where for bringing the benefit of that article, he must be :

- (1) a member of a civil service of the Union;
 - (2) a member of an all-India service;
 - (3) a member of a civil service of a State;
 - (4) a member holding a civil post under -
- (a) Union.

(b) State.

We will now refer to the relevant case-law as to the tests adopted in determining the meaning of an authority under the control of the Government of India. The leading case is *Sukhdev Singh v. Bhagatram* [1975] 47 FJR 214. There the question arose whether (1) the Oil and Natural Gas Commission; (2) Life Insurance Corporation; and (3) the Industrial Finance Corporation, are authorities within the meaning of article 12 of the Constitution. At p. 230, the learned Chief Justice observed, after referring to Halsbury's Laws of England, as follows :

"A public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefits of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit.

* * * (p. 232). All these provisions indicate at each stage that the creation, composition of membership, the functions and powers, the financial powers, the audit of accounts, the returns, the capital, the borrowing powers, the dissolution of the Commission and acquisition of land for the purpose of the company and the powers of entry are all under authority and agency of the Central Government.

* * * (p. 234). The structure of the Life Insurance Corporation indicates that the Corporation is an agency of the Government carrying on the exclusive business of life insurance. Each and every provision shows in no uncertain terms that the voice is that of the Central Government and the Hands are also of the central Government."

72. Mathew, J. observed as follows (at p. 250) :

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

action". Why then should action of these corporations be not State actions ?"

73. According to Sri M. R. Narayanaswami, learned counsel for the write petitioners, having regard to the close similarity between the Life Insurance Corporation Act and Central Act 5 of 1970, undoubtedly, the Nationalised Bank would be "an establishment under the Government of India." We will now draw a tabular statement of the provisions of the two Acts.

Central Act 31 of 1956 Central Act 5 of
(L.I.C. Act) 1970

S. 3 Establishment S. 3

S. 5 Capital S. 3(3)

S. 5(2) Body Corporate S. 3(4) Body Corporation

S. 7 Vesting Section S. 4

S. 7(2) Assets, meaning thereof S. 5(1) Assets

S. 18 Location of Central Office S. 7 Location of Head
office and Management

S.12, 12(2) and 12(4)

S. 11 and 11(4) Provisions relating
to existing employees

Ss. 24 to 28, 28 A Finance, Audit and S. 10

S. 38 Dissolution S. 18

S. 49 Power to make Regulations S. 19

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

74. If it is really a case of ascertaining the meaning of the words "authority under the control of Government of India", certainly, having regard to the close similarity between the Life Insurance Corporation Act and Central Act 5 of 1970, without hesitation we would have held that the Bank is an authority. But, we are to construe the meaning of an establishment under of Central Government. How best these decisions could be applied, we will consider after referring to a

few other cases.

75. In *Ajay Hasia v. Khalid Mujib Sehravardi*, (supra), the question arises whether the Regional Engineering College, Srinagar, one of the fifteen Engineering Colleges in the country sponsored by the Government of India would be an authority within the meaning of article 12 of the Constitution of India. That college was established and its administration and management were as carried on by a Society registered under the Jammu and Kashmir Registration of Societies Act, 1898. In para. 7, it was observed :

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

76. This case referred to the decision in *Ramana Dayaram Shetty v. International airport authority of India* (Supra), and approved the following observations contained in that judgment :

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

whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government ? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not."

The Court then proceeded to indicate the different tests, apart from ownership of the entire share capital :

"..... if extensive and unusual financial assistance is given and the purpose of the Government is giving such assistance coincides with the purposes for which the corporation is expected to use the assistance and such purpose is of public character, it may be relevant circumstance supporting an instrumentality or agency of Government It may, therefore, be possible to say that where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with the governmental character But a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise and oration as State action. Vide Sukhdev v. Bhagatram, [1975] 47 FJR 214, So also the existence of deep and pervasive State instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State-conferred or State-protected. There can be little doubt that State-conferred or State-protected monopoly status would be highly relevant in assessing the aggregate weight of the Corporation's ties to the State."

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

"It may be noted that beside the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying it as agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram, (supra) where the learned Judge said that (p. 248 of 47 FJR) :

"Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function perfumed Government agencies. Activities which are too fundamental to the society are by definition too important not to be considered Government function."

The court, however, proceeded to point out with reference to the last functional test :

"... the decisions show that test of public or governmental character of the function is not easy of application and does not invariably lead to the correct enforce because the range of governmental activity is broad and varies and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a Corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-government function. Perhaps the distinction between governmental and non-governmental functions is not valid any more in. Social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social status has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. [Mathew, J., in *Sukhdev v. Bhagatram* (supra)]. But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other addition factor, entwined with Government" or fortified by some other additional factor, may reader the corporation and instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of inference". These observation of the Court in *International Airport Authority* cases (supra) have our full approval.

9. The tests for determining as to when a Corporation can be said to be an instrumentality or agency of the Government may now be culled out from the judgment in *International Airport Authority* (supra). These tests are not conclusive or clinching, but they are merely indicative India which have to be used with care and caution, because while stressing the necessary of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stitched 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 summarises the relevant test gathered from the decision in *International Airport Authority*'s case (supra) 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 the 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 are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the Corporation as an instrumentality or agency of Government".

(6) "Specifically, if a department of Government is transferred to a Corporation, it would be a strong factor supportive of the 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 International Airport Authority's case (supra) be an "authority" and, therefore, "State" within the meaning of the expression in article 12."

77. The above said decision then referred to Uttar Pradesh Warehousing Corporation v. Vijay Narain [1980] 57 FJR 1, and the observation made by the learned Judge (Chinnappa Reddy, J.) in that case strongly reinforcing the view. It was observed in para. 15, at pages 497 and 498 (of AIR 1981 SC) as under :

"It is in the light of this discussion that we must now proceed to examine whether the society in the present case is an "authority" falling within the definition of "State" in article 12. Is it an instrumentality or agency of the Government ? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rule of the Society. The composition of the Society is dominated by the representatives appointed by the Central Government and the Government of Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The money required and the Government of Jammu and Kashmir and even if any other monied are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The rules to be made by the Society are also required to have the prior approval of the State and the Central Government and the accounts of the Society have also to be submitted to both The Government with the approval of the State and the Central Government and the accounts of the Society have also to be submitted to both the Government for their scrutiny and satisfaction. The Society is also to comply with all such directions as may be issued by the State Government and the accounts of the Society have also to be submitted to both the Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Government have even the power to appoint any other person or persons to be members of the Society is also to comply with all such directions as may be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Government is indeed so deep and

pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Government have even the power to appoint any other person or person to be members of the Society and any member of the Society other than a member representing the State or Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Government, which is in charge of genial superintendence, direction and control of the affairs of the Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the Central Government. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Government and the use the words of Ray, C.J., in Sukhdev Singh" case (supra), the voice is that of the State and the Central Government and the hands are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or the agency of the State and the Central Governments, and its is and "authority" within the meaning of article 12."

78. Thus, even a society was held to be an authority within the meaning of article 12 of the Constitution. In *Electricity Board, Rajasthan v. Mohan Lal* (supra), the Rajasthan State Electricity Board was held to be and authority under article 12 of the Constitution of India. In *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, :

"The appellant herein filed a writ petition in the High Court of Patna disputing the validity of the reference to the Industrial Tribunal by the State Government of Bihar the two following holidays and, secondly, whether the second Saturday of a month should be an off-day for the Heavy Engineering Corporation, Ranchi, Government company. The grounds set out in the writ petition were two :

(1) The appropriate Government to make the reference was the Central Government; and

(2) The questions referred were at the time actually pending before the certifying authority under the Industrial Employment (Standing Orders) Act, 1946, on an application for modification of the company"s standing orders and, therefore, the said questions would not be industrial disputes that could be validly referred for adjudication.

The High Court held against both the Contentions and upheld the reference. Hence the instant appeal to the Supreme Court with the certificate of the High Court.

Held : The words "under the authority" in section 2(a) of the Industrial Disputes Act, 1947 mean"Pursuant to the authority", such as when an agent or servant acts under or pursuant to the authority of his principal or master. That cannot be

said of the company incorporated under the Companies Act, 1956, which derives its power and functions from and by virtue of its memorandum and articles of association.

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

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

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

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

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

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

81. The decision in *Ramana Dayaram Shetty v. International Airport Authority of India* (supra), to which we have already made a reference, in para. 29, at page 1647, the Supreme Court explains the purport of the ruling as follows :

"The second decision to which we must refer is that in *Heavy Engineering Mazdoor Union v. State of Bihar* (supra). The question which arose in this case was whether a reference of an industrial dispute between the Heavy Engineering Corporation Ltd. (hereinafter referred to as the Corporation), and the union made

by the State of Bihar u/s 10 of the Industrial Disputed Act, 1947, was valid. The argument of the union was that the industry in question was "carried on under the authority of the of the Central Government" and the reference could, therefore, be made only by the Central Government. The Court held that the words made only by the Central Government. The Court held that the words "under the authority" mean "pursuant to the authority", such as where an agent or a servant acts under or pursuant to the authority of his principal or master" and on this view, the Court addressed itself to the question whether the Corporation could be said to be carrying on business pursuant to the authority of the Central Government. The answer to this question was obviously "no" because the Corporation was carrying on business by virtue of the authority it derived from its memorandum and articles of association and not by reason of any granted by the Central Government. The Corporation, in carrying on business, was acting on its own behalf and not on behalf of the Central Government and it was therefore, not a servant or agent of the Central government in the sense that its actions would bind the Central Government. There was no question in this case whether the Corporation was an instrumentality of the Central Government and, therefore, and "authority" within the meaning of article 12. We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the Corporation should be an agent of the Government. It is not the relationship of principal and agent which is relevant and material but whether the Corporation is an instrumentality of the government in the sense that a part of the governing power of the State is located in the Corporation and though the Corporation is acting on its own behalf and not on behalf of the Government, its action is really in the nature of State action"

82. The next case which could be referred to is *Biharilal Dobray Vs. Roshan Lal Dobray*, . This case dealt with the meaning of office of profit under the Government of India and The test to be adopted for determination of such an office and it was observed (p. 395) :

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

83. The Indian Statistical Institute, which is a Society registered under the Societies Registration Act, whether would be an authority within the meaning of

article 12 of the Constitution of India came up for consideration in *Minhas (B.S) v. Indian Statistical Institute*, [1984] 1 LLJ 67, a reference was made to the earlier ruling in *Ajay Hasia v. Khalid Mujib Sehravardi* (supra), and it was held that the expression "other authorities" in article 12 must be given a broad and liberal interpretation. On that basis, it was concluded that, having regard to the control exercised by the Government of India, it would be an "authority". In an unreported judgment (vide C.R.P. No. 2630 of 1979) of which one of us was a party, the question was entirely different. There the question was whether the property of the Bank could be considered to be the property of the Government to claim the benefit of the doctrine of instrumentality. I answered in the negative. That can be of no assistance in deciding the issue involved in this case. Thus, on an analysis of the above rulings, two legal propositions emerge :

(1) A Statutory Corporation like the Nationalised Bank over which the Government of India exercises deep and pervasive control is undoubtedly "agency" or instrumentality of the Central Government.

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

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

Establishments Act :

1. Tamil Nadu shops and Nothing contained in this Act

Establishment Act-Section shall apply to establishments

4(1)(c) under

the Central and State Government,

2. Kerala Shops and establishment Local Authorities, Reserve Bank

Act-Section 3(1)(c) of India Railway Administration

prating any railway as defined

3. Andhra Pradesh Shops and in clauses (20), article 366,

Establishments Act-Section in of the Constitution and

64(1)(b) in clauses (20), article 366,

of the Constitution and

4. Pondicherry Shops and

Act, Section 4(1)(c) Nothing in this Act shall apply

to offices of or under the Central

5. Karnataka Shops and Estab- and State Government or Local
lishments Act, section Authorities except commercial

3(1) (a) undertakings.

6. Bombay Shops and Estab- Notwithstanding anything
ishments, undertakings. contained in this Act the

Act, Bombay Act 79 of the provisions of this Act

1948, Section 4 mentioned in the 3rd column

of Schedule II shall not apply

to the establishments, employees

and other persons mentioned them

in the 2nd column of the said

Schedule.

Schedule II - item (i)

1. Establishments of the
Central Government.

2. Establishments of the
State Government.

3. Establishments of the
Local Authorities.

4. Establishments of the
Bombay Port Trust.

5. Establishments of any
Railway Administration.

All provisions.

In *Madras State Electricity Board v. Commissioner of Labour* (supra), this Court had held that the then Madras State Electricity Board was not entitled to exemption from the purview of section 4(1)(c) of the Tamil Nadu Shops and Establishments Act. The Court reasoned as follows : "That the Electricity Act gives the State Government a measure of control over the activities of the Board which, subject to that control, is an autonomous body, did not admit of any doubt. I do not think it is necessary to discuss in detail the statutory provisions

of the Electricity Act to examine the degree of control which the State Government could lawfully exercise. It was clear that the employees of the Board were not employees of the State Government. The clerical employees of the Board constituting an establishment and a commercial establishment within the meaning of section 2(3) of the Shops and Establishments Act were not the clerical employees of the State Government, and, therefore, the establishment cannot be viewed as an establishment under the State Government within the meaning of section 4(1)(c) of the Act. That the Board was under the control of the State Government did not make the employees, employees of the Government, nor did it make the establishment consisting of the clerical employees, an establishment under the State Government. It is the direct relationship of master and servant between the State Government and the persons employed in the establishment or commercial establishment that is necessary to take that establishment outside the scope of the Act u/s 4(1)(c)."

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

85. In *Madras State Electricity Board v. Commissioner of Labour* (supra), this Court, relying *Narayanaswamy v. Krishnamurthy* (supra), held that the Board was not a department of the Government. This reasoning was based on the ruling just now referred, namely, *Narayanaswami v. Krishnamurthy* (supra). In that case, it was held that the Life Insurance Corporation was not a department of the Government of India. Therefore, service under the Corporation would not tantamount to service under the Government. It is on this basis, Sri N. G. R. Prasad contends that the consistent view of this Court is, in order that it may be establishment under the Government, it should be a department of the Government. We are unable to persuade ourselves to accept this view. If really that was the intention of the law makers, nothing would have been easier than to include department of a Government, u/s 4(1)(c) of the Shops Act. Even otherwise, as rightly held by our learned brother Ramanujam, J., in *Sukhdev Singh's case*, [1975] 47 FJR 214, when the very Life Insurance Corporation has been held to be an authority within the meaning of article 12 and having regard to the close similarity between the provisions of the Life Insurance Corporation Act and Central Act 5 of 1970, this ruling cannot be held to be good law any longer. It is no doubt true that the ruling in *Narayanaswami v. Krishnamurthy* (supra) came to be noted in *Manohar Nathurao Samarth Vs. Marotrao and Others*, . The reference is made only in passing. The Supreme Court did not deal with this aspect of the case, namely, under the Government or under the control of Government. Therefore, that ruling cannot be of any assistance to the appellant.

86. In *Corporation of City of Nagpur v. Gopal Shastri Narayan Ayyar*, [1977] 50 FJR 231, the following passage occurs at p. 236 :

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

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

87. The nearest ruling is the one reported in *Canara Bank v. Appellate Authority* under the Kerala Shops and Establishments Act, [1981] 59 FJR 92. That case dealt with the scope of exemption clause occurring u/s 3(1)(c) of the Kerala Shops Act. That also uses the identical phraseology, namely, establishments under the Central Government or State Government. Strong reliance is placed by the appellant on this ruling. In that case, admittedly the Nationalised Bank, namely, Canara Bank, was held not to fall within the scope of the exemption clause. At pages 95-96, it was stated thus :

"The counsel for the petitioner/appellant contended that since the capital of the new company belongs to the Government and the Government alone can order dissolution of the company, it is a property of the Government and, therefore, the establishment to manage this property is an establishment under the Government. This contention ignores the fundamental difference between the company and the shareholders of the company. The shareholders are different from the company. They have right over the shares. That does not mean they are part-owners of the company to the extent of their shares. The company has its own separate existence distinct from the shareholders and, therefore, the fact that the entire share capital of the Bank belongs to the Government does not make the new Bank a Government. It has a juridical personality distinct from the State. But at the same time, it is linked with it. This is the essential feature of a State undertaking. But it will difficult to call it an establishment under the Government. Further, the expression "establishment" can only mean the group of persons who form the organisation managing the undertaking. In the matter of policy, this establishment may have to obey the directives but in the day-to-day management, the State has absolutely no control and never interferes with it. Hence, it cannot be said that the establishment of these nationalised banks are establishments under the Government. In Shorter Oxford English Dictionary, the meaning of the word "establishment" as "an organised staff of employees or servants including or occasionally limited to, the "building in which they are located." was adopted by the Court in *Karunakaran Nair v. Authority under the Payment of Wages Act*, [1972] 1 LLJ 350. We find that the expresses the correct idea of that word used in section 3 of the Act. Besides this exemption, there are

five other exemptions and all of them convey the same idea, namely, the staff of employees or servants belonging to a certain concern. The entire concern does not come under the expression "establishment" but only the group of persons who run the establishment. So, even if the undertaking belongs to the Government, by the fact that all the shares of the company are owned by the Government, the establishment of that undertaking is not an establishment under the Government. In this view, the number of authorities cited at the Bar and all of which equate an instrumentality with the Government for the purpose of Part III of the Constitution have no application to the facts of this case. Therefore, we are unable to agree with the argument of the petitioner's counsel that the Nationalised Bank like the Canara Bank or the Bank of India will be an establishment under the Central Government as that expression is used in section 3(1)(c) of the Act."

88. Again at page 97 (of 59 FJR), it was observed by the Full Bench as follows :

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

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

- (1) The decisions holding that the statutory corporations would fall within the meaning of "other authorities" as contemplated under article 12 of the Constitution, would be of no assistance.
- (2) The control over the Nationalised Banks is limited only to matters of policy, as stated in section 8 of the Central Act 5 of 1970.
- (3) The Nationalised Bank is a legal person. It has right to acquire, hold and dispose of property.
- (4) It is liable to Income Tax as any other independent citizen.
- (5) The day-to-day administration and in appointing, dismissing officers and staff, the Bank has the fullest freedom and, as such, it is not under the Government.

(6) The company has its own, separate existence distinct from shareholders and, therefore, the fact that the entire share capital belongs to the Government of India does not make a Nationalised Bank, a part of Government;

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

90. With great respect, we are unable to accept these reasonings. As a matter of fact, in another Full Bench of the very same High Court in Jacob Philip Vs. State Bank of Travancore and Others, , the Corporation was the State Bank of Travancore. In para. 7, it was observed as follows :

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

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

91. It cannot be gainsaid that the principle applicable to the determination of an authority under article 12 can bodily be imported in deciding the meaning of establishment under the Government. However, the line of reasoning, namely, the theory of deep and pervasive control, must prevail to find out whether the statutory Corporations are under the Central Government or functioning

independently. It is not correct to state that the control of the Government of India relates only to matters of policy as adumbrated u/s 8 of Central Act 5 of 1970. On the contrary, there is every conceivable control over :

- (1) Capital funds.
- (2) The location of the head offices at such places as the Central Government may direct.
- (3) The power of general superintendence.
- (4) The constitution of the Board by the Central Government.
- (5) The custodian holding office under the pleasure of the Central Government.
- (6) The policy of the Central Government to be followed u/s 8.
- (7) The power of the Central Government to make a scheme to carry out the provisions of the Act, the custodian being a public servant.
- (8) Regulations to be made after sanction of the Central Government.

Therefore, it is clear from the above distinctive provisions that the finance flows from the Government of India. The appointment of Director, the reduction or enhancement of the capital, either splitting up of or amalgamation of the various Banks and the net profit of all the Nationalised Banks vesting with the Government clearly indicate that the voice of the Nationalised Banks is the voice of the Central Government. We are in entire agreement with our learned brother Ramanujam, J., when he says that the voice of the Nationalised Bank is the voice of the Central Government. We would, however, add that the Nationalised Bank is merely "his master"s voice".

92. No doubt, the Reserve Bank of India has been by a specific mention excluded from the purview of the Act u/s 3(1)(c) of the Kerala Act, as well as the corresponding provision in the Tamil Nadu Act. That, in our considered view, cannot mean that it was not the intention of the Legislature not to exempt the Nationalised Banks.

93. The Reserve Bank of India was constituted under Central act 2 of 1934. The object of the Act was to constitute a Reserve Bank of India to regulate the issue of bank notes and keeping of reserves with a view to securing a monetary system in India and generally to operate the currency and credit system of the country to its advantage. At that time there was disorganisation of the monetary systems of the world, and, therefore, in the preamble of the Act, it was observed that in the present disorganisation of the monetary systems of the world, it is not possible to determine what will be suitable as a permanent basis for the Indian Monetary System. But whereas it is expedient to make temporary provision on the basis of the existing monetary system, and to leave the question of the monetary standard best suited to India to be considered when the international monetary position has become sufficiently clear and stable to make it possible to

frame permanent measures. Originally, it was a shareholders' bank. Because it is considered to be expedient to bring the share capital of the Reserve Bank of public ownership, Central Act 62 of 1948 was enacted. That came into force on the appointed day, namely, 1st January, 1949. That was the Act to bring the share capital of the Reserve Bank to public ownership and to make consequential amendments in the Reserve Bank of India Act, 1934. Section 3 of the Act is as follows :

"3. Transfer of Bank shares. - (1) On the appointed day -

(a) all shares in the capital of the bank shall by virtue of this Act be deemed to be transferred free of all trusts, liabilities and encumbrances to the Central Government; and

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

Provided that where the amount so calculated is not an exact multiple of one hundred rupees, the amount in excess of the nearest lower multiple of one hundred rupees shall be paid by cheque drawn on the bank :

Provided further that in respect of any share obtained at par from the central Government by any Director of the Bank in pursuance of sub-section (8) of section 4 of the principal Act as in force immediately before the appointed day, the said amount shall be calculated at the rate of one hundred rupees per share.

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

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

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

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

94. We have already analysed various cases arising under article 12 of the Constitution of India. The difference in language between article 12 of the Constitution of India which says "an authority under the control of the

Government" and section 4(1)(c) of the Shops Act which says an establishment" under the Government of India, cannot be lost sight of. Therefore, it becomes imperative to ascertain the meaning of the word "under".

Under - "In or into a condition of subjugation, regulation or subordination." [See Webster's Third New International Dictionary, page 2487]

"Subordinate or lower rank or position. In senses denoting subordination or subjugation, with abstract or other subject, denoting the authority or control, direction, care, examination, restraint, etc."

"In or into a position or state of subjugation or submission." [See Shorter Oxford English Dictionary, Vol. II, 3rd Edn., page 2290]

"Subordinate subjected to". [See The Compact Edition of the Oxford English Dictionary, Vol. II].

Under - "Subject to the authority, rule, control of".

"Subject to the supervision, instructions or influence of". [See The Grolier International Dictionary, Vol. II.]

Webster's Dictionary of the English Language - Encyclopaedia Edition - Unabridged II, page 1992 :

Under -

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

(6) In a state of liability, obligation.

Under Adv. -

(2) Lower in authority, position, power, etc., subordinate.

(3) Held in control or restraint, used predicatively.

Boviar's Law Dictionary - "Under" - The terms sometimes used in its literal sense of "below in position" but more frequently in its secondary meaning of "inferior" or "subordinate".

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

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

95. In Venkatramaiya's Law Lexicon, at page 1766 (1971 Edn.), it is stated as follows :

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

In Zila Parishad (District Board) Vs. Smt. Shanti Devi and Another, , the word "under" came up for interpretation while considering the words "done under an Act". It was observed at page 593 :

""Under" has the same significance as "by virtue of", "by or through the authority of" vide 43, Words and Phrases, page 84 and supplement page 33. In Vithoba Babaji Narote Vs. Sholapur Municipality, , it was said that there is no material difference as to the principle involved between the words of section 80, Civil Procedure Code, and the words "done or purporting to have been done in pursuance of the Act" occurring in section 286 of the Bombay Municipalities Act."

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

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

"Control" will cover the right to tell the possessor what is to be done with property.

A train is not "under the control" of the Railway Company running it, if in the matter complained of the company are prevented by viz major, e.g., the Post-master-General acting under statutory powers."

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

96. In Motsingh Vs. Bhaiyyalal, , it is observed as follows :

"In clause (a) of article 191(1) of the Constitution the expression used is "any office of profit under the Government." The use of the word "under" would obviously cannot a subordination to the Government. As I would show in the sequel, the provisions of the act would not doubt show that the respondent was working under the local authority of the Zila Parishad, but article 191(1)(a) of the Constitution, unlike article 58, does not include persons holding an office under a Local Authority. Article 58 of the Constitution prohibits a person holding an office of profit not only under the Government of India or the Government of any State but also under any Local or other Authority subject to the control of any of the said Government from contesting election as the President of India. Similar provision is, however, not made in article 19(1)(a) and the omission of the clause, "who holds an office of profit under any local or other authority subject to the control of any of the said Governments" from that article is not without significance. That would only show that the Parliament wanted to debar a person holding an office of profit under the Government of India or State

Government from contesting elections to the Legislative Assemblies of the State because of the possibility of a conflict between duty and self-interest but it did not intend to debar a person holding an office of profit under a Local or other Authority subject to the control of any of the said Governments, presumably because there was no likelihood of a conflict between duty and self-interest".

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

97. In *Gurushanthappa v. Abdul Khuddus*, AIR 1696 SC 744, in para. 10, the following observations are found (p. 749) :

"We are unable to accept the proposition that the mere fact that the Government had control over the Managing Director and other Directors as well as the power of issuing directions relating to the working of the company can lead to the inference that every employee of the company is under the control of the Government. The power of appointment and dismissal of respondent 1 vested in the Managing Director of the company and not in the Government. Even the directions for the day-to-day work to be performed by respondent 1 could only be issued by the Managing Director of the company and not by the Government. The indirect control of the Government which might arise because of the power of the Government to appoint the Managing Director and to issue directions to the company in its general working does not bring respondent No. 1 directly under the control of the Government. In *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others*, , the position was quite different. In that case, the appellant was appointed by the Government and was liable to be dismissed by the Government. His day-to-day working was controlled by the Comptroller and Auditor-General who was a servant of the Government and was not in any way an office-bearer of the two companies concerned. In fact the Court had no hesitation in holding that the appellant in that case was holding an office of profit under the Government, because the Court found that the several elements which existed were the power to appoint, the power to dismiss, the power to control and give directions as to determine the question of remuneration. All these elements being present, the Court did not find any difficulty in finding that the appellant was holding an office of profit under the Government. In the case before us, the position is quite different. The power to appoint and dismiss respondent No. 1 does not vest in the Government, or in any Government servant. The power to control and give directions as to the manner in which the duties of the office are to be performed by respondent No. 1 also does not vest in the Government, but in an officer of the company. Even the power to determine the question of remuneration payable to respondent No. 1 is not vested in the Government which can only lay down rules relating to the conditions of service of the employees of the company. We are unable to agree that, in these

circumstances, the indirect control exercisable by the Government because of its power to appoint the Directors and to give general directions to the company can be held to make the post of superintendent, Safety Engineering Department, an office of profit under the Government."

98. But, in the case on hand, the tests employed in para. 10 of this judgment (cited supra) are necessary including the fixation of remuneration. No doubt, here is no provision for an appeal in the Discipline and Appeal Regulations of the Bank in question, Indian Overseas Bank. That was one of the tests laid down in *Biharilal Dobray Vs. Roshan Lal Dobray*, , respectively. The following is the observation at page 395 :

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

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

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

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

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

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

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

100. Now, we will go to deal with the state Bank of India. This Bank was

constituted for the expansion of banking activities on a large scale more particularly in the rural and semi-urban areas and for diverse other public purposes and to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected herewith or incidental thereto. The Imperial Bank of India was constituted by the Imperial Bank of India Act of 1920. The objects and reasons of the Act are relevant for our purposes. That may now be set out.

"State Bank of India Act, 1955 (Act 23 of 1955) :

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

Suitable provisions are made relative to the acquisition of the under-taking of the Imperial Bank, the taking over of the business and staff, the payment of compensation to shareholders, the setting up of an appropriate machinery for the governance of the State Bank of India, the business which the Bank may and may not transact, etc. It is contemplated that the Reserve Bank will always hold a minimum shareholding of 25 per cent. in the paid-up capital of the Bank. By virtue of this holding and the composition of the Board of Directors of the Bank as well as by virtue of the power to give directions in matters of policy involving public interest vested in the Central Government, it is provided that the general working of the State Bank of India shall be responsive to and in consonance with Government policies while the autonomy of the institution in the day-to-day working will be fully maintained. Amendments necessary to the Reserve Bank of India Act, 1934, and to the Banking Companies Act, 1949, consequent to the establishment of this institution have been provided for in the Third and Fourth Schedules to the Bill."

101. This Act underwent two amendments one in 1955 itself and another in 1964 by amending Act 33 of 1955 and Act 35 of 1964, respectively. The reasons for

those amendments can best be found from the Statements of Objects and Reasons of those amending Acts (See [1955] 25 Comp Cas 108).

"Amending Act 33 of 1955 : The scheme of the State Bank of India Act, 1955, envisaged the State Bank of India coming into existence and the Imperial Bank of India going out of existence simultaneously on the 'appointed day' (being the day notified in this behalf by the Central Government) and provided for the automatic transfer of all the assets and liabilities of the undertaking of the Imperial Bank of India from that institution to the State of Bank India. While there was no difficulty about such transfer so far as the assets and liabilities of the Imperial Bank situated in India were concerned, Government were advised that it was doubtful whether such an automatic transfer of assets and liabilities made by virtue of an Indian Law from one corporate body to another would be recognised and given effect to in foreign countries in respect of the assets and liabilities of the foreign branches of the Imperial Bank of India. In the light of the advice obtained on this legal issue from counsel in the different foreign countries concerned, it was decided that it would be advisable to amend the scheme of the Act and to provide for the continued existence of the Imperial Bank of India as a corporate entity beyond the 'appointed day' to enable it to make over its business in its foreign branches by execution of documentary transfers, if necessary, to the corresponding branches of the State Bank of India to be opened there. It was, therefore, necessary to amend the State Bank of India Act, 1955, and as this had to be done prior to 1st July, 1955, which had been notified as the 'appointed day' under the State Bank of India Act, the State Bank of India (Amendment) Ordinance, 1955, was promulgated on 23rd June, 1955. The present Bill seeks to convert that Ordinance into an Act."

102. State Bank of India Act, 1955 (Amending Act 35 of 1964) (See [1964] 34 Comp Cas 49).

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

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

103. We will now compare the provisions of Central Act 5 of 1970 and the State Bank of India Act.

Preamble to the Act Preamble to the Act.

Section 2(d). "Corresponding 3. Establishment of the State New Bank" in relation to an Bank. - (i) A Bank called the existing Bank means the Body State Bank of India shall be corporate specified against constituted to carry on the such Bank in column (2) of business of banking and other the First Schedule. business in accordance with the provisions of this Act and

(e) "Custodian" means the for the purpose of taking over person who becomes or is the under taking of the Imperial appointed a Custodian under Bank.

section 7.

(ii) The Reserve Bank together

(f) Existing Bank means a with such other persons as may Banking Company specified in from time to time become column (1) of the First shareholders in the State Bank in Schedule accordance with the provisions of this Act shall constitute a body

3. Establishment of corresponding corporate with perpetual new Banks and business thereof. succession.

(3) The entire capital of each (iii) The State Bank shall corresponding new Bank shall stand have the power to acquire the vested in, and allotted to, the whole property and to dispose of Central Government. the same.

4. Undertaking of existing 4. Authorised Capital - The Banks to vest in corresponding authorised capital shall be new Banks. Rupees twenty crores divided into twenty lakhs of fully paid up

5. General effect of vesting. shares of Rupees one hundred each provided that the Central

6. Payment of Compensation. Government may increase or reduce

- (1) Every existing Bank shall it.

be given by the Central

Government such compensation 5. Issued capital. - (1) The

in respect of the transfer under Issued capital shall be Rupees

section 4 to the corresponding five crores, sixty-two lakhs

new Bank of the undertaking of and fifty thousand divided into

of the existing bank as is shares which stand allotted to

specified against each bank in the Reserve Bank in lieu of the

the Second Schedule. shares of the Imperial Bank.

7. Head Office and Management. (2) The Central Board may

- (1) The head office of each from time to time increase the

corresponding new Bank shall be issued capital but no increase

at such place as the Central to be in a manner that the

Government may by notification Reserve Bank holds less than 55

in the official gazette specify per cent. of the issued capital.

in this behalf and until any such

place is so specified shall (3) No increase in the issued

be at such place at which the capital beyond twelve crores and

Head Office of this Bank is on fifty lakhs of rupees without

the commencement of this Act prior sanction of the Central

located. Government.

(2) The general superintendence 6. Transfer of assets and

direction and management of the liabilities of Imperial Bank

affairs and business of a corres- to the State Bank. - All shares

ponding new Bank shall vest in a in the capital of the Imperial

a Board of Directors which shall Bank shall be transferred to

be entitled to exercise all such to and vest with the Reserve

powers and do all such acts and Bank.

things as the corresponding new

Bank is authorised to exercise (9) Compensation to be given

and do. Central Board;

shareholders of Imperial Bank. -

(3) The Central Government (1) Every person who immediately

shall in consultation with the before the appointed day is

Reserve Bank constitute the First registered as a holder of shares in

Board of Directors of a the Imperial Bank shall be

corresponing new Bank consisting entitled to compensation in

of not more than 7 persons to be in accordance with the provisions

appointed by the Central of the First Schedule.

Government and every Director

shall hold office until the 10. (1) The shares of the

Board of Directors of such State Bank shall be freely

corresponding new Bank is transferable subject to

constituted in accordance with sub-section (2).

the scheme made u/s 9.

(2). Nothing in sub-section

(4) Until the first Board of (1) shall entitle the Reserve

Directors is appointed by the Bank to sell its shares in the

Central Government under State Bank if it results in

sub-section (3), the general reducing the shares of the

superintendence, direction and Reserve Bank to less than 55 per

management of the business of cent. of the issued capital.

the corresponding new Bank shall

vest with the Custodian. 11. No person shall be registered

as a shareholder in respect

(5) The Chairman of an existing of any shares held by him or

Notification No. of an existing jointly with any other person in

Bank shall be the Custodian and excess of 200 shares. This if he declines the Central restriction shall not apply to Government may appoint any other the institutions referred to person as the Custodian. in the proviso to the section.

(6) The Custodian holds office 12. Shares to be approved securities. during the pleasure of the Central

Government. 13. The principal register of shareholders to be kept at the

8. The corresponding new Banks Central Office.

to be guided by the directions of

the Central Government in the 16. (1) The Central Office of discharge of its functions. the State Bank shall be at Bombay.

9. Power of the Central (2) The State Bank shall have Government to make a scheme to Local Head Offices in Bombay, carry out the provisions of this Calcutta and Madras.

Act.

17. Management. - (1) The

(4) The Central Government may, general superintendence and after consultation with the direction of the affairs and Reserve Bank, make a scheme to business of the State Bank amend or vary any scheme to amend and are not by this Act expressly or vary any scheme made under directed or required to be done sub-section (1). by the State Bank and are not by this Act expressly directed

11. Corresponding new bank to or required to be done by the be deemed to be an Indian company. State Bank in general meeting.

14. Every custodian shall be (2) The Central Board in discharging deemed to be a public servant charging its functions shall act under the Indian Penal Code. on business principles of public interest.

18. Dissolution : No provision

of law relating to winding up of 16. (1) The Central Office of Corporations shall apply to a new the State Bank shall be at Bank and no corresponding new Bank Bombay.

shall be placed in liquidation

save by order of the Central 18. (1) In the discharge of Government. its functions, State Bank shall

be guided by such directions in

19. Power to make regulations : in matter of policy involving

The Board of Directors of a public interest as the Central corresponding new Bank may after Government may in consultation consultation with the Reserve Bank with the Government of the and with the previous sanction of Reserve Bank and Chairman of the Central Government make State Bank give to it.

regulations consistent with the

provisions of this Act or any (2) All directions given by scheme made thereunder for the the Central Government shall be purpose of giving effect to the given through the Reserve Bank.

provisions of this Act. If any question arises whether the direction relates to a

matter of policy of public

interest, the decision of the

Central Government is final.

19. Composition of the

Central Board : It shall consist

of -

(a) a Chaiman and Vice Chairman

to be appointed by the Central

Government in consultation with

the Reserve

Bank and after consideration of the recommendations of the Central Board;

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

(bb) Presidents of the Local Boards appointed under sub-section (5) of section 21.

(c) (1) If the total amount of holdings of the shareholders other than Reserve Bank is not more than 10 per cent. of the total issued capital - 2 Directors.

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

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

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

(cb) One Director among employees as are not workmen.

(d) Not less than 2 and not more than 6 Directors nominated

by the Central Government in consultation with the Reserve Bank.

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

(f) One Director by the Reserve Bank.

20. Term of Office of Chairman and Managing Director, etc.

21. Local Boards to be constituted at each place where the State Bank has a Local Head Office.

(A) Term of office of Members of the Local Board.

(B) Powers of the Local Board

(C) Local Committees.

24. Removal from office of Directors.

25. Casual vacancies.

26. Remuneration of Directors.

27. Powers and remuneration of the Chairman.

28. Powers and remuneration of the Vice-Chairman.

29. Powers and remuneration of Managing Director.

31. Meetings of the Central

Board.

33. Other business which State Bank may transact.

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

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

38. Disposal of profits. - Out of its net profits the State Bank may declare a dividend after making provision for the requirements mentioned in the section. The rate of dividend shall be determined by the Central Board.

42. Balance sheet, etc., of State Bank may be discussed at the General Meeting. - (1) The General Meeting referred to as an Annual General Meeting shall be held annually at such place where there is a Local Head

Office of the State Bank as
shall from time to time be
specified by the Central Board
and the General Meeting may be
convened by the State Bank at
any time.

45. Bar to the liquidation
of the state Bank, save by order
of the Central Government.

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

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

We have already noted the definition of the word "establishment" under the Tamil Nadu Shops Act which includes "a bank". However, it is no doubt correct as Sri Gopinath, learned counsel, would contend that if the argument of the petitioner is accepted, all the banks would go out of the purview of the Tamil Nadu Shops Act. Apart from the nationalised banks, which have been taken over under Central Act 5 of 1970, there are still other banks which would certainly fall within the definition of "establishment" u/s 2(3) of this Act. No doubt, in *Ramana Dayaram Shetty v. International Airport Authority of India* (supra), in para. 19, financial assistance is stated to be one of the tests. Here also the shareholdings of the State Bank of India is as under : (The affidavit of R. C. Royappa may now be extracted to show the percentage of shareholders)

"The authorised capital of the bank is Rs. 20 crores consisting of 20 lakhs shares of Rs. 100 each. The issued and subscribed capital is Rs. 5,62,50,000 consisting of 5,62,500 shares of Rs. 100 each. The total number of shareholders of the

bank is 2,749 which consists of Reserve Bank of India, 73 other institutions and Government agencies and 2,675 individual shareholders. Out of the total 5,62,500 shares, Reserve Bank holds 5,18,000 shares, i.e. 92 per cent. financial institutions and Government agencies 3.4 per cent. and individual shareholders 4.6 per cent. of the holdings."

That clearly shows that 92 per cent. of the shareholding is by Reserve Bank, 3.4 per cent. by governmental agencies while 4.6 per cent. along is in the individual shareholding. It is on this basis that it is argued by Sri Marthandam, that if there is accountability even to one shareholder, it would not mean "under the control of the Government".

104. In order to appreciate as to what exactly is the nature of control the Central Government has over the State Bank of India, we would now go to the ruling of this Court. In *V. Ramiah Vs. State Bank of India*, , the question arose as to whether the State Bank of India was an "authority" within the meaning of article 12 of the Constitution. At pages 315 to 317, it was held as follows :

"Having regard to the said considerations, is the State Bank of India a public authority ? The preamble to the State Bank of India Act, 1955, sets out its objects, namely, the extension of banking facilities on a large scale more particularly in the rural and semi-urban areas and for diverse other public purposes and to transfer to the State Bank the undertaking of the Imperial Bank of India. Section 3 established the State Bank of India to carry on the business of banking and other business in accordance with the provisions of the Act and for taking over the undertaking of the Imperial Bank. The bank is to be a body corporate with perpetual succession and a common seal. Sections 4 and 5 provide for authorised and issued capital. It is to be noted that increase or reduction of the authorised capital of Rs. 20 crores can only be done by the Central Government. Further, a specified issued capital of the State Bank stands allotted to the Reserve Bank in lieu of the shares of the Imperial Bank transferred to and vested in the State Bank. Any increase of the issued capital is controlled by the Reserve Bank subject to the further provision that no increase in the issued capital beyond Rs. 12,50,000 shall be made without the previous sanction of the Central Government. The Reserve Bank shall at all times have not less than 50 per cent. of the shares and by section 11 individual holdings are restricted. By section 13, the bank shall keep its Central Office a register of shareholders containing the prescribed particulars. Unless otherwise provided by the Central Government by notification, the Central Office of the State Bank is to be at Bombay. The State Bank is enjoined by section 16 to open Local head Offices as well as open and maintain its branches. Section 18, which is important, says that :

"In the discharge of its functioning including those relating to a subsidiary bank, the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank, give to it."

The section further provides that all directions given by the Central Government shall be given through the Reserve Bank and, if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final. The Central Government will constitute the first Central Board of Directors. The composition of the Board should be such that eight of the Directors should be nominated by the Central Government in consultation with the Reserve bank to represent and not more than two Managing Directors will be appointed by the Central Board but with the approval of the Central Government. Apart from these nominations, the Central Government can make one more nomination of a Directors. A Managing Director shall hold office for such terms not exceeding a certain period as the Central Government may fix. In the constitution of Local Board or Local Committees too, the Central Government is entrusted with powers of nomination of Directors to be elected. The powers of removal of the Chairman, Vice-Chairman, of the Central Board, are vested in the Central Government. The Chairman is to receive such salary as the Central Board may determine with the approval of the Central Government.

The Central Government has also got an effective voice in the fixation of remuneration of the Vice-Chairman. The bank, among its other duties, should act as the agent of the reserve Bank of India, for paying, receiving, collecting and remitting money, bullion and securities on behalf of any Government in India. The State Bank u/s 40 should furnish to the Central Government and the Reserve Bank within a stated time its balance-sheet together with the profit and loss account and the auditor's report on the working of the State Bank during the period covered by the accounts. The auditors also are required to make a report to the Central Government. The Central Government is also vested with power to remove any difficulties in respect of certain matters by issuing specific orders and also in consultation with the Reserve bank and by notification in official gazette, make rules to carry out the purposes of this Act. The Central Board can make rules to carry out the purposes of this Act. The Central Board can make regulations only after consultation with the Reserve Bank and with the previous sanction of the Central Government not inconsistent with the Act and the rules made thereunder are to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. Disposal of profits is dealt with by section 38 which says that :

"After making provision for bad and doubtful debts, depreciation on assets, equalisation of dividends, contribution to staff and superannuation funds and for all other matters for which provision is necessary by or under this act or which are usually provided for by banking companies, the State Bank may, out of its net profits, declare a dividend"

the rate being determined by the Central Board subject to the provisions of para. 6 of Schedule I.

Having regard to these provisions of the Act, particularly the public purpose

which it is meant to serve, the extensive Government control over the bank including several matters of policy, appointment and removal, fixation of remuneration of particular officers of the Central Board and the power of nomination and appointment of Directors, the statutory audit subject to Government control, the obligation of the bank to send returns to the Central Government, the obligation of the auditor also to forward audit reports to the Central Government and the power of the Central Government to wind up the bank, there can be no doubt, in my opinion, that the State Bank of India is a public authority. It is also clearly charged with public duties by various provisions of the Act in respect of several matters. It is impossible to say that on ground of the provision for disposal of profits, the State Bank of India is a commercial concern constituted for gain. The disposal of profits as provided by section 38 is not the primary object of the establishment of the State Bank but it is incidental to the nature of the business transacted by the bank. I hold, therefore, that the State Bank is public authority, a corporation within the meaning of section 45 of the Specific Relief Act, and an authority within the meaning of article 226 of the Constitution. But whether and to what extent it is subject to judicial control or interference with, under or outside that article, is a different matter which I shall immediately proceed to consider."

105. This ruling was upheld by the Division Bench of this Court in appeal in Writ Appeal No. 180 of 1963, dated 22nd December, 1966 vide [1967] 32 FJR 339. It was held at page 345 :

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

Therefore, we are unable to accept the argument of Shri Marthandum that the liability to account to shareholders other than the Central Government and

governmental financial institution would make the State Bank of India to go out of the control of the Central Government.

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

107. Notwithstanding the absence of words like "instrumentality" or "agency" u/s 4(1)(c) of the Shops Act, it should be our endeavour to find out the nature of control, the Government of India has over the State Bank of India. The composition of the Central Board u/s 19 and the power of the Central Government to appoint Directors and clauses (a), (b), (ca), (d) and (e) are very important. Section 10 a of the Banking Regulation Act deals with the Board of Directors of the banking company. The terms of Office of the Chairman is fixed by the Central Government u/s 20(1) of Act 23 of 1955. In the same section, under sub-section (1A), his services are terminable by the Central Government. u/s 21-C, six members of the Local Board are nominated by the Central Government. Section 24 postulates removal of Directors by the Central Government. u/s 25, even casual vacancies are to be filled up by the Central Government. The salary of the Chairman u/s 27(2) is determined by the Central Government, likewise the Vice-Chairman's salary u/s 29(2). In Chapter VI, section 35 is important. The various sub-sections clearly postulate that the acquiring of the business of other banks must be only with the sanction of the Central Government. Section 37 talks of creation of reserve fund. In the following manner :

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

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

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

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

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

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

The power of the Central Government to make rules is contained u/s 498 while u/s 50 it is the Central Board, after consulting with the Reserve Bank and with the previous sanction of the Central Government that gets the power to make regulations. Therefore, there is practically every conceivable control by the Central Government. Consequently, we have to necessarily hold that in view of these provisions immense or extensive control is exercised by the Central Government.

108. In *Som Prakash Rekhi v. Union of India*, :

"If we distil the essence of article 12 textually and apprehend the expanded meaning of "State" as interpreted precedentially, we may solve the dilemma as to whether the Bharat Petroleum is but a double of Bharat Sarkar. Let us be clear that the jurisprudence bearing on corporations is not a myth but a reality. What we mean is that corporate personality is a reality and not an illusion or fictitious construction of the law. It is a legal person. Indeed "a legal person" is any subject-matter other than a human being to which the law attributes personality." This extension, for good and sufficient reasons, of the conception of personality, is one of the most noteworthy feats of the legal imagination." : Salmond on Jurisprudence, 10th Edn., pages 324-325. Corporations are one species of legal persons invented by the law and invested with a variety of attributes so as to achieve certain purposes sanctioned by the law. For those purposes, a corporation or company has a legal existence all its own. The characteristics of corporations, their rights and liabilities, functional autonomy and juristic status, are jurisprudentially recognised as of a distinct entity even where such corporations are but State agencies or instrumentalities. For purposes of the Companies Act, 1956, a Government company has distinct personality which cannot be confused with the State. Likewise, a statutory corporation constituted to carry on a commercial or other activity is for many purposes a distinct juristic entity not drowned in the sea of State, although, in substance, its existence may be but a projection of the State. What we wish to emphasise is that merely because a company or other legal person has functional and jural individuality for certain purposes and in certain areas of law, it does not necessarily follow that for the effective enforcement of fundamental rights under our constitutional scheme, we should not scan the real character of that entity; and if it is found to be a mere agent or surrogate of the State, in fact owned by the State, in truth controlled by the State and in effect an incarnation of the State, constitutional lawyers must not blink at these facts and frustrate the enforcement of fundamental rights despite the inclusive definition of article 12 that any authority controlled by the Government of India is itself state. Law has many dimensions and fundamental facts must govern the applicability of fundamental rights in a given situation.

Control by Government of the Corporation is writ large in the Act and in the factum of being a Government company. Moreover, here, section 7 gives to the Government company mentioned in it a statutory recognition, a legislative

sanction and a status above a mere Government company. If the entity is no more than a company under the Company law or society under the law relating to registered societies or co-operative societies, you cannot call it an authority. A ration shop run by a co-operative store financed by Government is not an authority, being a mere merchant, not a sharer of State power. 'Authority (in Administrative Law) is a body having jurisdiction in certain matters of a public nature'. the Law Lexicon of British India, P. Ramanatha Aiyar, 1940 (page 101).

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

109. Similarly, in one of the recent pronouncements, the Supreme Court had occasion to deal with the question whether the Indian Council of Agricultural Research is an authority within the meaning of article 12 of the Constitution of India. In P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , it was held, after referring to the earlier cases to which we have made a reference already, as follows (at pp. 319 and 320) :

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

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

Therefore, the statutory personality by itself will not in any manner be little an establishment being under the control of the Government of India. Of course one

distinguishing feature between the State Bank of India and the Reserve Bank of India is the nature of control. No doubt section 38 of the State Bank of India Act may be one of the distinguishing features. However, that very aspect of the matter had been dealt with by Veeraswamy J. as he then was, in *V. Ramiah Vs. State Bank of India*, , which passage we have already extracted. If, therefore, the disposal of profits is not the primary object of the establishment of the State Bank of India, but only incidental to the nature of business transaction by the Bank, that may not stand in the way of our conclusion. In final, we may say "the voice is Jacob's voice, but the hands are the hands of Esau".

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

111. In the result, we dismiss the appeals and allow the Writ Petitions Nos. 11029 of 1981, 1730 of 1984, 1550 of 1981 and 9563 and 1963 of 1983. However, having regard to the nice question of law, we do not want to mulct the parties with costs. Therefore, each party do bear its respective costs.

BY THE COURT

112. After we pronounced the judgment, Sri Gopinath, learned counsel, prayed for leave to appeal to the Supreme Court, We do not think that this is a fit case in which leave should be granted, because we have merely applied the various rulings of the Supreme Court.