

(2016) 12 KL CK 0055
In the High Court Of Kerala
Case No : W.P.(C) No. 4056 of 2011 (S)

Indian National Trade Union Congress	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Kerala Public Service Commission (Additional Functions as Respects the Kerala State Road Transport Corporation) Act, 1970 — Section 3

Citation : (2017) 1 ESC 474 : (2017) 1 KerLJ 215 : (2017) 2 KLT 719 : (2017) LIC 566 : (2017) 2 SCT 19

Hon'ble Judges : K.T. Sankaran, P.D. Rajan and P. Ubaid, JJ.

Bench : Full Bench

Advocate : Sri. E.K. Nandakumar, Sri. K. John Mathai, Sri. P. Gopinatha Menon and Sri. P. Benny Thomas, Advocates, for the Respondent Nos. 3, 11, 14; Sri. K. Ramakumar Sr. and Sri. Rahul Venugopal, Advocate, for the Petitioner; Sri. P.C. Sasidharan, SC, KPSC, for th

Final Decision : Dismissed

Judgement

K.T. Sankaran, J. - A Division Bench of this Court referred the matter to the Full Bench for decision on the following questions: (1) Whether the word "may" used in Section 3 of the Kerala Public Service Commission (Additional Functions as respects Certain Corporations and Companies) Act, 1970 (Act 19 of 1970) (hereinafter referred to as "the Additional Functions Act") should be treated as "shall" making it mandatory for the Corporations and Government Companies as defined in the Additional Functions Act to consult the Kerala Public Service Commission (hereinafter referred to as "PSC") for making appointment of employees; and (2) Whether the Government has any power at all under the Additional Functions Act or Rules or otherwise to notify specifying the posts or excluding the posts from the operation of the Additional Functions Act and Rules.

2. The Writ Petition was filed as a Public Interest Litigation by the Indian National Trade Union Congress, Ernakulam District Committee and one P.B. Sathishkumar working in Traco Cable Company Limited, challenging Ext.P6 Government Order,

G.O.(Ms) No.1/2011/ID dated 1.1.2011, by which it was decided to create certain new posts in eight new factories and eight expansion/modernization projects in respondents 3 to 12 Public Sector Undertakings and accorded sanction to the Chief Executive Officers of the respective Public Sector Undertakings to fill up those posts in a special manner as stated in Annexures I and II fully observing the existing reservation norms in Public Sector Undertakings.

3. The main contention raised by the petitioners is that the recruitment process in respondents 3 to 12 Public Sector Undertakings should be as evolved by the PSC and Employment Exchange. It is also contended that any appointment made by- passing the constitutional functionaries like the PSC and Employment Exchange would be illegal, void and unsustainable.

4. From the reference order, it is seen that the main thrust of arguments was that going by Section 3 of the Additional Functions Act, it is mandatory that the Corporations and Government Companies, as defined in the Additional Functions Act, should consult the PSC on all matters relating to the methods of recruitment of employees and the principles to be followed in making appointment of the employees by direct recruitment in those Corporations and Government Companies. Though the reliefs prayed for in the Writ Petition are mainly with respect to the validity of Ext.P6 Government Order, the main question to be decided is question No.1 referred to in paragraph 1 above. Question No.2 is only subsidiary to question No.1.

5. Learned senior counsel appearing for the petitioners referred to Articles 320 and 321 of the Constitution of India and the Additional Functions Act as well as the Kerala Public Service Commission (Additional Functions as respects the Kerala State Road Transport Corporation) Act, 1970. He also relied on the decisions in *State of Uttar Pradesh v. Hari Ram* ((2013) 4 SCC 280); *Krishnan Nair Sankaran Nair v. S. Chellappan Pillai* (1966 KLT 517); *Dinkar Anna Patil and another v. State of Maharashtra and others* (AIR 1999 SC 152); *Bachahan Devi and another v. Nagar Nigam, Gorakhpur and another* ((2008) 12 SCC 372); *Deewan Singh and others v. Rajendra PD. Ardevi and others* ((2007) 10 SCC 528); *Chaluvegowda and others v. State by Circle Inspector of Police* ((2012) 13 SCC 538); and *Bangalore Turf Club Limited v. Regional Director, Employees' State Insurance Corporation* ((2014) 9 SCC 657). Learned counsel appearing for the respondents as well as the learned Government Pleader relied on the decisions in *Mohammed Shafi and others v. State of Kerala & others* (1976 KLT 725); *Union of India and another v. Deoki Nandan Aggarwal* (AIR 1992 SC 96); *Krishnankutty v. State of Kerala* (2005 (4) KLT 448); and *Venugopal K.N. and others v. State of Kerala and others* (2009 (4) KHC 52) : 2009 ICO 2494.

6. Article 320 of the Constitution of India provides for functions of the Public Service Commission. It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively. Article 320(3) provides

that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts; on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers etc. etc. Article 321 of the Constitution of India reads as follows:

"321. Power to extend functions of Public Service Commissions.-- An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution."

7. The Additional Functions Act was enacted to provide for the exercise of certain additional functions by the PSC as respects the services of certain Corporations and Companies. Section 2(a) and (b) of the Additional Functions Act defines "Corporation" and "Government Company" respectively. Section 3(1) of the Additional Functions Act provides for consultation by the Corporations to the Public Service Commission. Sub-sections (2) and (3) of Section 3 of the Additional Functions Act are relevant for the purpose of deciding the questions involved in the case and those provisions are extracted hereunder:

"(2) The Board of Directors of a Government Company may consult the Public Service Commission, -

(a) on all matters relating to the methods of recruitment of the employees of that Government Company;

(b) on the principles to be followed in making appointments by direct recruitment of the employees of that Government Company and on the suitability of candidates for such appointments.

Explanation:- In this sub-section "employee" shall not include any director, managing agent, secretary and treasurer, manager or secretary of the Government Company.

(3) Where the Public Service Commission is consulted on any matter under sub-section (1) or sub-section (2), it shall be the duty of the Public Service Commission to advise the Corporation or the Board of Directors of the Government Company, as the case may be, on that matter."

8. The submission made by the learned senior counsel for the petitioners is that the word "may" occurring in Section 3(1) and (2) of the Additional Functions Act should be read as "shall". It is submitted that the Additional Functions Act is to be taken into account as a whole and it should be understood in the context of Articles 320 and 321 of the Constitution of India. It is submitted that even if the expression used is "may", it gives no discretion to the Corporations as well as

the Government Companies not to consult the PSC. The learned counsel appearing for the respondents, on the other hand, submitted that the words used in the statute must be read in its plain meaning. It is not mandatory for the Corporations and the Government Companies to consult the Public Service Commission in the matter of recruitment of employees. It is submitted that sub-section (3) of Section 3 would make it clear that the word "may" occurring in Section 3 is not mandatory and it is only optional. It is contended that it is for the Corporations as well as the Government Companies to decide whether to consult the PSC or not in the matter of recruitment of employees.

9. In *State of Uttar Pradesh v. Hari Ram*, (2013) 4 SCC 280, the Supreme Court dealt with a case under the Urban Land (Ceiling and Regulation) Act, 1976. The said Act contained a provision that where any land is vested in the State Government, the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the State Government in that behalf within thirty days of the service of the notice. The said Act also provides for taking possession of such land by the competent authority even by using force. Interpreting the word "may" occurring in the Act, the Supreme Court held thus:

"37. The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

10. The tests to determine whether provisions of a Section are mandatory or directory are laid down in *Krishnan Nair Sankaran Nair v. S. Chellappan Pillai* (1966 KLT 517) as follows:

"6. The question whether the provisions of a section are mandatory or directory will depend upon its language and object. No universal rule applicable to all cases can be formulated. If the object is to protect the interest of the public or the enforcement of a public policy declared by the Legislature, then the provisions may be imperative in character and violation of them would render a transaction void. If, on the other hand, the object is only to protect the interests of a person or a class of persons and no interest of the public is involved, then the provisions, though couched in imperative language, may be directory in character and a violation of the provisions would not render the transaction void.

"

11. In *Dinkar Anna Patil and another v. State of Maharashtra and others* (AIR 1999 SC 152), the question whether the word "may" occurring in Rule 4-A of the

Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 should be read as "shall" came up for consideration. Rule 4-A provided that notwithstanding anything contained in Rule 4, if in the opinion of the State Government, the exigencies of service so require, the Government may, in consultation with the Maharashtra Public Service Commission, wherever necessary, make appointments to the posts in relaxation of the percentage prescribed in Rule 4 for appointment by promotion and nomination. In that context, the Supreme Court held thus:

"18. Coming to the interpretation of Rule 4A, it is not doubt true that the language used therein indicates that the said rule is made applicable retrospectively from the date when the rules were made applicable w.e.f. October 10, 1982. Rule 4A opens with non-obstante clause and provides that if in the opinion of the State Government, the exigencies of service so require, the government may in consultation with the MPSC wherever necessary make appointments to the post in relaxation of the percentage prescribed in Rule 4 of the Rules by promotion and nomination. The Tribunal held that the word "may" used in this rule is directory but in our considered view to give such a meaning would render the very object of consultation with the MPSC wherever necessary nugatory. It would give unbridled power to the government to dispense with the consultation with MPSC which may result into arbitrary exercise of the powers by the Authority. This could never be the object of Rule 4A. In our considered view, the word "may" must mean "shall" and this is also obvious from the correspondence between the State Government and MPSC. The Government of Maharashtra wanted to relax quota rule but MPSC was not agreeable and ultimately it relented to the request of the Government of Maharashtra and suggested amended Rule 4A. This suggestion was accepted and accordingly the amendment was inserted in the Rules. We also find support to our view from the decision of this Court in *Keshav Chandra Joshi v. Union of India*, 1992 Supp (1) SCC 272. This Court was dealing with the interpretation of Rule 27 of U.P. Forest Service Rules, 1952 and the said rule is similar to Rule 4A. While construing the word "may" used in Rule 27, this Court held that the word "may" has to be read as "shall" and, therefore, consultation is mandatory. "

12. In *Bachahan Devi and another v. Nagar Nigam, Gorakhpur and another* ((2008) 12 SCC 372), the Supreme Court, construing the word "may" occurring in Rule 25 Order 41 of the Code of Civil Procedure, held thus:

"17. The question, whether a particular provision of a statute, which, on the face of it, appears mandatory inasmuch as it used the word "shall", or is merely directory, cannot be resolved by laying down any general rule, but depends upon the facts of each case particularly on a consideration of the purpose and object of the enactment in making the provision. To ascertain the intention, the court has to examine carefully the object of the statute, consequence that may follow from insisting on a strict observance of the particular provision and, above all, the general scheme of the other provisions of which it forms a part. The purpose for

which the provision has been made, the object to be attained, the intention of the legislature in making the provision, the serious inconvenience or injustice which may result in treating the provision one way or the other, the relation of the provision to other consideration which may arise on the facts of any particular case, have all to be taken into account in arriving at the conclusion whether the provision is mandatory or directory. Two main considerations for regarding a rule as directory are: (i) absence of any provision for the contingency of any particular rule not being complied with or followed, and (ii) serious general inconvenience and prejudice to the general public would result if the act in question is declared invalid for non-compliance with the particular rule."

13. In *Deewan Singh and others v. Rajendra PD. Ardevi and others* ((2007) 10 SCC 528), it was held thus:

"32. Even if the expression "shall" is read as "may" although there does not exist any reason therefor, the statute provides for a power coupled with a duty. It is a well-settled principle of interpretation of statutes that where power is conferred upon a public authority coupled with discretion, the word "may" which denotes discretion, should be construed to mean a command."

14. In *Chaluvegowda and others v. State by Circle Inspector of Police* ((2012) 13 SCC 538), the Supreme Court held thus:

"13. Rule 2-A(i) of the Rules mandates the High Court in criminal cases, where the accused is not represented by an advocate and is not possessed with sufficient means to engage an advocate or where the accused remains absent though notified of hearing of the appeal to appoint any advocate from the panel of advocates prepared; as provided under clause (iv) of the Rules. Though Rule 2-A(i) uses the expression "may", the same requires to be interpreted as laying down mandatory direction to the Court to engage an advocate, if the conditions laid down in the Rule are otherwise satisfied. See *Bashira v. State of U.P.* (AIR 1968 SC 1313).

15. In *Bangalore Turf Club Limited v. Regional Director, Employees' State Insurance Corporation* ((2014) 9 SCC 657), the Supreme Court held that the literal rule of construction may be the primary approach to be utilised for interpretation of a statute and that words in the statute should in the first instance be given their meaning as understood in common parlance. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.

16. In *Mohammed Shafi and others v. State of Kerala and others* (1976 KLT 725), referring to the Additional Functions Act, a learned single Judge of this Court held that the Public Service Commission is enabled to give advice in regard to recruitment, only if the Corporation so requires.

17. In *Union of India and another v. Deoki Nandan Aggarwal* (AIR 1992 SC 96), the Supreme Court held thus:

"14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide *P.K. Unni v. Nirmala Industries*, (1990) 1 SCR 482 at p.488: (AIR 1990 SC 933 at p.936), *Mangilal v. Sugamchand Rathi* (1965) 5 SCR 239: (AIR 1965 SC 101), *Sri Ram Ram Narain Medhi v. The State of Bombay* 1959 Supp. (1) SCR 489: (AIR 1959 SC 459), *Smt. Hira Devi v. District Board, Shahjahanpur* 1952 SCR 1122 at p.1131: (AIR 1952 SC 362 at p.365), *Nalinakhya Bysack v. Shyam Sunder Haldar* (1953 SCR 533 at p.545) : (AIR 1953 SC 148 at p.152), *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCR 146: (AIR 1980 SC 1896), *S. Narayanaswami v. G. Punnerselvam* (1973) 1 SCR 172 at p. 182: (AIR 1972 SC 2284 at p.2289), *N.S. Vardachari v. G. Vasantha Pai* (1973) 1 SCR 886: (AIR 1973 SC 38), *Union of India v. Sankal Chand Himatlal Sheth* (1978) 1 SCR 423: (AIR 1977 SC 2328) and *Commr. of Sales Tax, U.P. v. Auriaya Chamber of Commerce, Allahabad* (1986) 2 SCR 430 at p.438 : (AIR 1986 SC 1556 at pp.1559-60). "

18. In *Krishnankutty v. State of Kerala* (2005 (4) KLT 448), a Division Bench of this Court held that the policy of the Government is that all employees of individual corporations and companies excluding workers as defined in the Factories Act and excluding persons employed in supervisory or managerial capacity are to be recruited through the PSC. The worker categories are excluded from the purview of the PSC.

19. In *Balachandran v. State of Kerala* (1999 (1) KLT 377), referring to Rule 2A of the Public Service Commission (Additional Functions as respects certain Corporations & Companies) Rules, 1970, which provides that no appointment to posts brought under the purview of the Public Service Commission shall be made except on the advice of the Commission, and Section 3(2) of the Additional Functions Act, a learned single Judge of this Court held thus:

"R.2A of the Rules provides that no appointment to the posts brought under the

purview of the P.S.C. shall be made, except on the advise of the P.S.C. The said rule thus applies only to the posts brought under the purview of the P.S.C. Section 3(2)(b) of the Act provides that the Board of Directors may consult the P.S.C. "on the principles to be followed in making appointments by direct recruitment of the employees" of that company and on the suitability of candidates for such appointments. Therefore, in the matter of appointment consultation with P.S.C. is mandatory, only when direct recruitment is resorted to by the Corporation."

20. In *Venugopal K.N. and others v. State of Kerala and others* (2009 (4) KHC 52), a learned single Judge of this Court considered whether the word "may" occurring in Section 3 of the Public Service Commission (Additional Functions as respects the Kerala State Road Transport Corporation) Act, 1970 should be considered as "shall" and held thus:

"9. This conspectus of the powers of the State Government in the management of the Corporations relevant to decide the interest that the State Government has in relation to the affairs of the Corporation. In this view of the matter, reverting to the provisions of the Additional Functions Act, it needs to be examined whether use of the word "may" by the State Legislature in Section 3(1) is to be excused off as a directory provision, or whether there is anything intrinsic in the Additional Functions Act to hold that consultation is inexcusably mandatory. Though Section 3(1) uses the word "may" in relation to the provision for consultation, Section 4 of that Act while conferring on the Government the power to make rules in consultation with the PSC and the Corporation for carrying out the purposes of the Additional Functions Act provides in Section 4(2) (c) of that Act, in particular and without prejudice to the generality of the provision in sub-section 1 of Section 4, that Rules may provide for any matter in respect of which it shall not be necessary to consult the PSC. Though that provision, as it now stands, was brought in by the Amending Act of 1990, it is deemed to have come into force on 09/02/1970, the date on which the Additional Functions Act was published in the first instance. When Section 4 empowers the Government to make a rule providing fort any matter in respect of which it shall not be necessary to consult the PSC, as a necessary corollary, the Legislature clearly intended that, except in cases where the Government makes such a rule, all matters which fall under Section 3 are matters for mandatory consultation. Therefore, the mere use of the word "may" in Section 3(1) does not retain the need for consultation as a directory requirement but provides that it is mandatory that the PSC is consulted in relation to matters which fall under Section 3, unless the State Government exercises the rule making power in Section 4(2)(c) and thereby takes the way in matters in respect of which it shall not be necessary to consult. Even if two views are available in this context, this appears to be the one that commends acceptance, having regard to the public interest involved in the Road Transport Corporation and the indisputable fact that service in the Road Transport Corporation is public service."

21. The question whether the word used "may" is only directory or whether it is mandatory depends on various factors. So also is the question whether the use of the word "shall" denotes it as mandatory or only directory. The resolution of the question depends on various factors. The purpose and object of the enactment is one of the considerations. The consequences that would follow insisting on strict observance of the provisions is also relevant. The intention of the legislature, the serious inconveniences or injustice which may result, the absence of any provision to meet the contingency of the provision being not implemented strictly, serious general inconveniences and prejudice to the general public are all relevant considerations. The primary approach to the question would be literal rule of construction. The words in the statute should in the first instance be given their meaning as understood in common parlance. It is also another principle that it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation. The Court has no power to legislate. The Court shall decide what the law is and not what it should be. Still the Courts have very often read the expression "may" as "shall" and vice versa depending on the provisions in the statute and the facts and circumstances of the case. Yet another principle is that where power is conferred upon a public authority coupled with discretion, the word "may" should be construed to mean "shall".

22. The Kerala Public Service Commission (Additional Functions) Act, 1963 (Act 16 of 1964) relates to appointment of officers and servants of the Kerala State Electricity Board. Section 3 therein makes it mandatory to consult the PSC on all matters relating to method of recruitment to services and posts under the Electricity Board and on the principles to be followed in making appointments, promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers. Section 4 of Act 16 of 1964 provides the rule making power and it includes matters in which it shall not be necessary for the PSC to be consulted. The Kerala Public Service Commission (Additional Functions as respects the Kerala State Road Transport Corporation) Act, 1970 (Act 3 of 1970) provides for the exercise of certain additional functions by the Kerala Public Service Commission as respects the services of the Kerala State Road Transport Corporation. Section 3 of Act 3 of 1970 provides that the Corporation may consult the Public Service Commission on all matters relating to the methods of recruitment. Section 4 of Act 3 of 1970 provides the rule making power and clause (c) therein deals with any matter in respect of which it shall not be necessary to consult the Public Service Commission.

23. Interpreting Section 4(1)(c) of Act 3 of 1970, it was held in Venugopal K.N. and others v. State of Kerala and others (2009 (4) KHC 52) that the word "may" occurring in Section 3 of the Act shall be construed "shall". However, in respect of Act 19 of 1970 (subject matter of the present case), the rule making power under Section 4 does not authorise the rule making authority to make a rule in respect of a matter where it shall not be necessary to consult the PSC.

24. In view of the aforesaid difference in the rule making power and in the Rules in Act 19 of 1970 and the Rules thereunder and Act 3 of 1970 and the Rules thereunder, we are of the view that the dictum laid down in *Venugopal K.N. and others v. State of Kerala and others* (2009 (4) KHC 52) with respect to the Kerala State Road Transport Corporation does not apply to the interpretation of Act 19 of 1970. In *Balachandran v. State of Kerala* (1999 (1) KLT 377), the provisions of Section 3(2)(b) of the Additional Functions Act (Act 19 of 1970) and Rule 2A in the Rules made thereunder came up for consideration and it was held that Rule 2A applies only to the posts brought under the purview of the PSC. It was also held that consultation with the PSC is mandatory only in the matter of direct recruitment and not with respect to deputation. In that decision, the question whether the word "may" occurring in Section 3 can be construed as "shall" was not considered. In *Mohammed Shafi and others v. State of Kerala and others* (1976 KLT 725), another learned single Judge held that the PSC is enabled to give advise in regard to recruitment only if the Corporation so requires.

25. In Act 16 of 1964 relating to appointment of officers and servants of the Kerala State Electricity Board, Section 3 uses the expression "shall". In Act 3 of 1970, though the word "may" is used in Section 3, the rule making power relates also to matters in respect of which it shall not be necessary to consult the PSC. In the Kerala Public Service Commission (Additional Functions as respects the Services under Local Authorities) Act, 1973 (Act 23 of 1973), Section 3 provides that notwithstanding anything contained in any law relating to recruitment and conditions of service of officers and servants of local authorities or any rule, bye-law or regulation made under any such law, the PSC shall be consulted on all matters relating to methods of recruitment to services and posts under a local authority. In the Kerala Public Service Commission (Additional Functions as respects certain Societies) Act, 1996 (Act 5 of 1996), Section 3(2) provides that the committee of every society shall consult the PSC as respects the matters relating to direct recruitment to the services and posts under the society. Section 3(1) of Act 5 of 1996 provides that it shall be the duty of the PSC to prepare select list for appointment, by direct recruitment, of officers and servants of the services under a society. Thus it can be seen that wherever the legislature thought it mandatory that consultation with the PSC is required, the provisions make it clear by using the expression "shall". The other statutes mentioned above and enacted under Article 321 of the Constitution make a specific deviation in respect of the use of the expression "shall" while under the statute in question, namely, the Additional Functions Act (Act 19 of 1970), the word used is "may". Thus the conscious deviation is clear when we examine the various other statutes mentioned above. Certain statutes make it obligatory to consult the Public Service Commission while the Additional Functions Act (Act 19 of 1970) makes a specific deviation. In Act 19 of 1970, there is no provision enabling the Government to make rules exempting consultation with the PSC in certain cases. It is not because it is mandatory to consult the PSC in all matters relating to recruitment but because it is the discretion of the Corporations and

Companies whether to consult the PSC or not. Rule 2A of the Kerala Public Service Commission (Consultation by Corporations and Companies) Rules 1971 which provides that no appointment to the posts brought under the purview of the Public Service Commission shall be made except on the advice of the Commission, makes the position clear. That means, the Act contemplates appointments to the posts outside the purview of the PSC. Section 3(3) of the Additional Functions Act (Act 19 of 1970) also makes the position clear. Section 3(3) provides that where the PSC is consulted on any matter under sub-section (1) or sub-section (2) of Section 3, it shall be the duty of the PSC to advise the Corporation or the Board of Directors of the Government Company, as the case may be, on that matter. The posts in a Corporation or Government Company can be brought under the purview of the PSC by a positive act of the Corporation or the Board of Directors of the Government Company. There is no provision in the Additional Functions Act (Act 19 of 1970) making it mandatory for the Corporation or the Government Company to consult the PSC.

26. On a careful consideration of the provisions in the Additional Functions Act (Act 19 of 1970) as well as the provisions in similar statutes as respects the Kerala State Electricity Board, Kerala State Road Transport Corporation, Co-operative Societies etc. and in the light of the settled principles of law, we are of the view that the word "may" occurring in Section 3 of the Additional Functions Act (Act 19 of 1970) can not be read as "shall" and it cannot be made mandatory that the Corporations as well as the Board of Directors of Government Companies should consult the PSC in the matter of appointment.

27. In view of the conclusion which we have arrived at on point No.1, it is not necessary to decide point No.2, since it does not have any impact on the rights of the petitioners and similarly situated persons. We leave open question No.2.

In view of the decision on point No.1, the petitioner is not entitled to get any relief in the Writ Petition and even if Ext.P6 is quashed, the situation would not change. For the aforesaid reasons, we dismiss the Writ Petition.