

(1999) 01 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No"s. 43146 of 1995 and 28766 and 28842 of 1996

M. Kumar

APPELLANT

Vs

Bharath Earth Movers Limited, Bangalore and Others

RESPONDENT

Date of Decision : 22-01-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 191, 58 (2), 66 (4)

Karnataka Municipal Corporations Act, 1976 — Section 21 (1) (c), 22, 23, 26 (1) (c)

Citation : AIR 1999 Kar 343 : (1999) ILR (Kar) 1715 : (1999) 5 KarLJ 193

Hon'ble Judges : Y. Bhaskar Rao, Acting C.J.; R.V. Raveendran, J; N.S. Veerabhadraiah, J

Bench : Full Bench

Advocate : Sri M.C. Narasimhan, for the Appellant; Sri Ashok Harnahalli, Sri S.N. Prasantha Chandra, Sri A.V. Srinivasa Reddy, A.G.A. and M/s. Sundara Swamy and Ramdas, for the Respondent

Judgement

1. The petitioners have filed these writ petitions assailing the constitutional validity of Section 26(1)(c) of the Karnataka Municipal Corporations Act (in short, "the KMC Act") and the action of the respondent organizations in refusing permission for contesting the election for Councillors of Municipal Corporation, Bangalore.

2. The petitioner in W.P. No. 43146 of 1995 is a workman employed in Bharat Earth Movers Limited, Bangalore Complex. Bharat Earth Movers is a Public Sector Establishment engaged in the manufacture of earth moving equipments and Railway Coaches. The shares of this Company are held in the name of the President of India and the same is "State" for the purpose of Article 12 of the Constitution of India. The petitioner's application seeking permission to contest in the Bangalore City Corporation Elections came to be rejected.

3. Petitioner Smt. C. Chandramma, in W.P. No. 28766 of 1996 is an employee working as Senior Office Assistant in M/s. Indian Telephone Industries Limited, Bangalore Complex, Dooravaninagar, Bangalore-16. She filed her nomination and

the scrutiny of the nomination papers was taken up on 4-1-1996. It appears that the first respondent had issued a note on the qualifications and disqualifications of candidates under the Act, dated 19-12-1995 and inter alia it was opined by the first respondent that employees of the State, Central and Public Sector Undertakings are deemed to hold an office of profit under an authority; and so, the same is a disqualification u/s 26(1)(c) of the KMC Act.

4. Petitioner Sri Muniraju in W.P. No. 28842 of 1996 is an employee working as Accountant Category (SH) in M/s. Indian Telephone Industries Limited, Bangalore Complex, Bangalore. He contends that Indian Telephone Industries Limited is a Public Sector Undertaking engaged in the business of manufacture of telecommunication equipment, and is run on business principles and not like a department of Government. It is not an "Authority" and that the Company cannot be treated as a State for the purpose of Constitution of India, in particular, Article 12 of the Constitution of India. In this case also, the petitioner's application came to be refused for contesting the Councillor election.

Hence, the petitioners are challenging the constitutional validity of Section 26(1) (c) of the KMC Act and refusal of permission to contest the Councillor election.

5. When these writ petitions came up before a learned Single Judge, the learned Single Judge referred the matter to a Division Bench. The Division Bench, in turn, referred these cases to the Full Bench, vide their reference which reads as follows:

"The important question of law requiring adjudication in these petitions is as to whether the employees of the respondents-company are eligible to contest elections to the Municipal Corporation in view of the provisions of Section 26(1) (c) of the Karnataka Municipal Corporations Act, 1976. It is contended on behalf of the petitioners that the aforesaid section does not debar them from contesting the elections because "the authority" referred to in the aforesaid clause does not contemplate a Government Company, particularly, the BEML which is stated to have resorted to disinvestment of part of the share capital in favour of the public. It is further contended that the authority referred to in the section is not that authority as is contemplated under Article 12 of the Constitution. Petitioner's contention is that the authority as contemplated under Article 12 of the Constitution refers to an authority only for the purposes of enforcement of fundamental rights and not for the purpose of determining or adjudicating the right of a citizen to contest the elections which he is otherwise legally entitled to contest.

2. The respondents have contested the claim of the petitioners on the basis of a judgment of this Court reported in Chenna Reddy Vs. Deputy Commissioner, , which is stated to have been affirmed by a Division Bench in Chenna Reddy v Deputy Commissioner, Kolar District and Others and by the Supreme Court in Chenna Reddy v Deputy Commissioner, Kolar District and Others . The learned Single Judge vide his order dated 8-10-1996 observed.-

"However, having regard to the subsequent decision of the Supreme Court in *Satrucharla Chandrasekhar Raju Vs. Vyricherla Pradeep Kumar Dev and another*, , which distinguishes *Biharilal Dobray Vs. Roshan Lal Dobray*, , and the decision of the Full Bench of this Court in *K.V. Panduranga Rao v Karnataka Dairy Development Corporation, Bangalore and Others* and the disinvestment of part of the share capital in BEML by the Central Government in favour of the public, the position may not be the same and the matter requires consideration by a Division Bench".

3. After hearing the learned Counsel for the parties, perusing the record and minutely examining various judgments cited at the Bar, we are prima facie of the opinion that the law laid down by this Court in *Chenna Reddy's case*, supra, which was affirmed by the Division Bench in W.A. No. 669 of 1990, requires reconsideration. While disposing of SLP No. 11150 of 1991, the Hon"ble Supreme Court had not decided the pleas on merit and appear to have dismissed the appeal in limine without assigning the reasons or passing a speaking order. The learned Counsel for the petitioners tried his best to persuade us to take a different view than the one taken by the Division Bench while disposing of W.A. No. 669 of 1990. Prima facie, though agreeing with his submissions, yet we have decided not to make such venture keeping in view the larger interests of the institution, its propriety and judicial discipline. We are however satisfied that the pleas raised require authoritative pronouncement by a Larger Bench. We are therefore of the opinion that the matter be referred to a Full Bench for adjudication of the points of law raised in these petitions. As the only point of law required to be adjudicated as noticed by us hereinabove, it would be appropriate that all the writ petitions are disposed of by the Full Bench after adjudication of the point of law noticed by us. Reference of the writ petitions, is therefore, made to the Full Bench in terms of Section 7 of the Karnataka High Court Act. The Registrar (Judicial) shall place the papers before the Hon"ble Chief Justice for his orders regarding constitution of Full Bench".

6. Therefore, these writ petitions came up before us. We have heard the learned Counsel for the petitioners as well as the learned Advocate General for State and learned Counsel for respondent-Companies.

7. The petitioners contend that BEML and ITI are Trading Organisations and not "other authorities" falling within the definition of "State" in Article 12. Even if BEML and ITI are "other authorities" under Article 12, it is only for the purpose of Chapters III and IV of the Constitution of India for enforcement of fundamental rights, and not with reference to the other chapters of the Constitution much less with reference to use of the expression "other authorities" occurring in a statute like Karnataka Municipal Corporations Act, 1976. In the year 1976, when the Karnataka Municipalities Act, 1976 was enacted, the prevalent view was that the term "other authorities" referred to only "Statutory Corporations" having regard to the decisions in the case of *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, , and the case of the

Council of Scientific and Industrial Research -- Sabhajit Tewary Vs. Union of India (UOI) and Others, . Thus the term "other authorities" in Section 26(1)(c) was used only to mean "Statutory Corporations". It was only in the year 1981, for the first time, "Government Companies" were considered as "other authorities" under Article 12. Therefore, contextually, the words "other authorities" in Section 26(1)(c) should be understood as referring only to Statutory Corporations. Therefore, it is contended by the petitioners that, holding of office of profit under "other authority" as defined under Article 12 is not a disqualification as the "other authority" u/s 26(1)(c) of the Act, is not the same as "other authority" in Article 12 of the Constitution. Consequently, Section 26(1)(c) of the KMC Act is no bar for contesting in the election. It is further contended that Section 26(1)(c) is irrational, vague and discriminatory and therefore, it is unconstitutional.

8. Learned Advocate General and Counsel for respondent organizations contended that the petitioners are the employees of Government Companies which will fall within the definition of "other authority" as used in Article 12 and Section 26(1)(c) of the Act. The term "other authority" used in Section 26(1)(c) has the same meaning as the words "other authority" in Article 12. Therefore, the petitioners incur disqualification u/s 26(1)(c) and barring them from contesting the election is legal and valid. Section 26(1)(c) of the KMC Act is neither irrational nor vague and there is no discrimination between same classes of persons. So, it is not violative of Article 14 of the Constitution of India. There are no merits in the writ petitions. Hence, the writ petitions are liable to be dismissed.

9. In view of the above contentions, the question that arises for consideration is:

"Whether the employment of petitioners under respondent-companies amount to holding of office of profit by the petitioners under "other authority" u/s 26(1)(c) of the Act and whether the petitioners are disqualified from contesting Councillor election in view of Section 26(1)(c) of the KMC Act".

10. To decide this issue, it is necessary to first to deal with the question:

"What is the meaning of the words "other authority" in Section 26(1)(c) of the KMC Act".

11. It will be convenient to extract Section 26(1)(c) of the Act and Articles 12, 58(2) and 66(4) of the Constitution, wherein, the term "other authority" is found.

Section 26(1)(c) of the KMC Act, 1976 reads:

"26. General disqualification for becoming a Councillor.-

(1) A person shall be disqualified for being chosen as and for being a Councillor.-

(c) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India, or under any local or other authority subject to the control of any of the said Governments other than such offices as are declared by rules made under

this Act not to disqualify the holder".

Article 12 reads:

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

Article 58(2) reads:

"58. Qualifications for election as President.-

(1)...

(a)...

(b)...

(c)...

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.--For the purpose of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State".

Article 66(4) reads:

66. Election of Vice-President.-

(1)....

(2)....

(3)....

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.--For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State".

We have to examine whether the words "other authority" in Section 26(1)(c) of the KMC Act is similar to "other authority" in Article 12 of the Constitution of India.

12. It was argued at length to persuade to hold that the respondent-companies are not the "other authorities" as defined under Article 12 of the Constitution. To appreciate the contentions, it is apposite to refer the relevant provisions of the Constitution and the KMC Act.

13. The Directive Principles and the Fundamental Rights together constitute the constitutional manifesto. The Preamble sets out the aims and objects of the Constitution. In order to achieve these aims and objects, certain basic Fundamental Rights are incorporated in Part III guaranteeing certain rights to citizens. These Rights were considered necessary for protection of every individual and the all round development of his personality, which is of utmost importance for the progress and welfare of the society itself. Directive Principles are meant for the development of the welfare of the society, as a whole, which in turn, enure to the benefit of the individuals. The State is charged with the obligation to protect the Fundamental Rights, and the duty and responsibility to implement the Directive Principles. Enormous power to implement them are conferred on the State which includes the power to curtail every Fundamental Right of an individual to the extent it is necessary to protect and advance the interests of the Society as a whole. No fundamental right is therefore absolute. No individual can claim to exercise his right to the prejudice of other individuals, i.e., Society, or can be permitted to exploit the society to achieve his selfish desires. The Constitution has created an obligation on the State to protect Fundamental Rights to the fullest possible extent duly to implement Directive Principles. The Constitution with a view to satisfy the obligations of the State, incorporated the definition of the word "State" under Article 12 of the Constitution, which reads.-

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

The definition is made applicable only to Fundamental Rights and Directive Principles.

14. The Constitution empowers State to establish any "instrumentality" or "agency", statutory or otherwise, for the purpose of fulfilment of its obligations for implementation of Directive Principles.

15. Part IX-A was incorporated providing constitutional status to the "Municipalities".

Article 243-Q deals with constitution of Municipalities.

Article 243-R deals with composition of Municipalities.

Article 243-S deals with constitution and composition of Wards Committees, etc.

Article 243-T deals with Reservation of Seats.

Article 243-V deals with disqualifications for membership.--It provides that a person shall be disqualified for being chosen as, and for being, a member of a Municipality.-

(a).....(omitted as not necessary).

(b) if he is so disqualified by or under any law made by the Legislature of the State.

Article 243-ZA deals with Elections to the Municipalities. Sub-clause (2) reads:

"Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities".

As per the above said clause, the Constitution empowers the States to make law with respect to all the matters relating to or in connection with election to Municipality.

"Article 243-ZF deals with continuance of existing laws and Municipalities".

The above provision makes it clear that any provision of any law relating to Municipalities in force in a State, immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of Chapter IX-A of the Constitution, shall continue to be in force until it is amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier. By virtue of this provision, the impugned Act is a continuing legislation governing the Municipalities in the State.

16. Article 38 of the Constitution obligates the State to strive and promote the welfare of the people by securing and protecting a social order in which social, economic and political justice in all walks of life is achieved.

17. Therefore, State is bound to conform to the Fundamental Rights while functioning through the Instrumentality of the "State" or "other authorities" like companies and societies registered under the Societies Registration Act.

18. The scope and ambit of Article 12 of the Constitution has been clarified by the pronouncements of Apex Court and High Courts.

19. Justice Shah, speaking for Constitutional Bench of the Supreme Court, in Rajasthan State Electricity Board's case, supra, while considering as to whether the Rajasthan State Electricity Board is a "State" within the meaning of Article 12 of the Constitution of India, held:

"The expression "other authorities" in Article 12 will thus include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred on the authority may be for the purpose of carrying on commercial activities for under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned

in Article 19(1)(g). In Part IV, the word "State" has been given the same meaning as in Article 12 and one of the Directive Principles laid down in Article 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Article 298 to carry on any trade or business. The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Article 12. On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence. The Rajasthan Electricity Board was clearly an authority to which the provisions of Part III of the Constitution were applicable".

20. In case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Supreme Court traced the genesis of the formation of the Government Companies and held that they were the Instrumentalities or the agencies of the State and were bound to conform to the Fundamental Rights in the same manner as the legislature and the executive. The relevant portion of the judgment reads:

". . . . So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "Management of State enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this". It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial Policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily, these functions could have been carried out by Government departmentally through its service personnel, but the instrumentality or agency of the corporations was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through the instrumentality or agency of corporations should equally be subject to the same limitations".

The Court also laid down the criteria to find out as to whether a company or body

was an instrumentality or agency of the State.

(2) These criterias were reiterated in the case *Som Prakash Rekhi v Union of India and Another*. In that case, the question for consideration was whether Bharat Petroleum Corporation Limited was State within the meaning of Article 12. Considering this question, it was held as follows:

". . . . In exercise of the powers conferred by sub-section (1) of Section 7 of the *Burmah Shell (Acquisition of Undertakings in India) Act, 1976* (2 of 1976), the Central Government, being satisfied that *Burmah Shell Refineries Limited*, a Government Company is willing to comply with such terms and conditions as may be imposed by the Central Government, hereby directs that the right, title and interest and the liabilities of *Burmah Shell Oil Storage and Distributing Company of India Limited* in relation to its undertakings in India shall, instead of continuing to vest in the Central Government vest with effect from the twenty-fourth day of January, 1976, in *Burmah Shell Refineries Limited*. This is the well-worn legal strategy for Government to run economic and like enterprises. We live in an era of public sector corporations, the State being the reality behind. Law does not hoodwink itself and what is but a strategy cannot be used as a stratagem:

XXX XXX XXX 26. Constitutional law is not a game of hide and seek but practical real life conclusions. So viewed, we are constrained to hold that *Burmah Shell*, a Government company though, is but the alter ego of the Central Government and must, therefore, be treated as definitionally caught in the net of "State" since a juristic veil worn for certain legal purposes cannot obliterate the true character of the entity for the purposes of constitutional law.

XXX XXX XXX 39. Let us cull out from *Airport Authority's* case, *supra*, the indicia of "other authorities. . . under control of the Government of India" bringing a corporation within the definition of "the State". The following factors have been emphasised in that ruling as telling, though not clinching. These characteristics convert a statutory corporation, a Government company, a co-operative society and other registered society or body into a State and they are not confined to statutory corporations alone. We may decoct the tests for ready reference:

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. Existence of "deep and pervasive State Control may afford an indication that the Corporation is a State agency or instrumentality".
3. "It may also be a relevant factor. . . .whether the corporation enjoys monopoly status which is State conferred or State protected."
4. "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".

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

40. The finale is reached when the cumulative effect of all the relevant factors above set out is assessed and once the body is found to be an instrument or agency of Government, the further conclusion emerges that it is "State" and is subject to the same constitutional limitations as Government.

55. Imagine the possible result of holding that a Government company, being just an entity created under a statute, not by a statute, it is not "State". Having regard to the directive in Article 38 and the amplitude of the other Article in para IV Government may appropriately embark upon almost any activity which in a non-socialist republic may fall within the private sector. Any person's employment, entertainment, travel, rest and leisure, hospital facility and funeral service may be controlled by the State. And if all these enterprises are executed through Government companies, bureaus, societies, councils, institutes and homes, the citizen may forfeit his fundamental freedoms vis-a-vis these strange beings which are Government in fact but corporate in form. If only fundamental rights were forbidden access to corporations, companies, bureaus, institutes, councils and kindred bodies which act as agencies of the Administration, there may be a break-down of the rule of law and the constitutional order in large sector of governmental activity carried on under the guise of "jural persons". It may pave the way for a new tyranny by arbitrary administrators operated from behind by Government but unaccountable to Part III of the Constitution. We cannot assent to an interpretation which leads to such a disastrous conclusion unless the language of Article 12 offers no other alternative.

56. It is well known that "Corporations have neither bodies to be kicked, nor souls to be damned" and Government corporations are mammoth organisations. If Part III of the Constitution is halted at the gates of corporations Justice Louis D. Brandeis's observation will be proved true:

The main objection to the very large corporation is that it makes possible -- and in many cases makes inevitable -- exercise of industrial absolutism.

It is dangerous to exonerate corporations from the need to have constitutional conscience; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mein, amenable to constitutional limitations must be adopted by the Court as against the alternative of permitting them to flourish as an imperium in imperio.

57. The commonsense signification of the expression "other authorities under the control of the Government of India" is plain and there is no reason to make exclusions of sophisticated grounds such as that the legal person must be a statutory corporation, must have power to make laws, must be created by and not under a statute and so on. The jurisprudence of Third World countries cannot afford the luxury against which Salmond cavilled (Salmond, Jurisprudence, 10th

Edn., P. 51)".

Applying the above principles, the question was answered in the affirmative.

(3) Again these principles have been reiterated by the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, . This case is more apposite to the present cases, as in that case, unlike in the case of *Ramana Dayaram Shetty*, supra, in which, the body held to be State was a statutory corporation, and in the case of *Som Prakash*, supra, the company held to be State was formed after statutory acquisition of a private company, the body held to be State was only a society registered under the Societies Registration Act. It was held to be "State" within the meaning of Article 12, as it was found to be an instrumentality or agency of the Government. The relevant portion of the judgment reads:

"But before we proceed to consider the merits of this ground of challenge, we must dispose of a preliminary objection raised on behalf of the respondents against the maintainability of the writ petition. The respondents contended that the college is run by a society which is not a corporation created by a statute but is a society registered under the Jammu and Kashmir Societies Registration Act, 1898 and it is therefore not an "authority" within the meaning of Article 12 of the Constitution and no writ petition can be maintained against it, nor can any complaint be made that it has acted arbitrarily in the matter of granting admissions and violated the equality clause of the Constitution.

xxx xxx xxx Obviously, the Society cannot be equated with the Government of India or the Government of any State nor can it be said to be a local authority and therefore, it must come within the expression "other authorities" if it is to fall within the definition of "State". That immediately leads us to a consideration of the question as to what are the "other authorities" contemplated in the definition of "State" in Article 12".

....It is the Fundamental Rights which along with the Directive Principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government "in fact owned by the Government, in truth controlled by the Government and in effect an incarnation of the Government" the Court must not allow the enforcement of Fundamental Rights to be frustrated by taking the view that it is not the Government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence subject to the same basic obligation to obey the Fundamental Rights as the Government".

21. The Supreme Court reiterated the principles laid down in *R.D. Shetty*'s case, supra, in its subsequent decisions:

- (1) Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .
- (2) Lamba Industries Vs. Union of India (UOI) and Others, .
- (3) Dr. S.M. Ilyas and Others Vs. Indian Council of Agricultural Research and Others, .
- (4) Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, .

It is not necessary to go into each case in detail.

22. The Supreme Court further held that, where the corporation is wholly controlled by the Government not only in policy making but also in carrying out functions entrusted to it, by the law establishing it or by charter of incorporations, it is an instrumentality of the State or agency of the Government. Similarly, the societies registered under the Societies Registration Act which are controlled by the Government or which are discharging the duties which are in the nature of public duties or controlled mostly by the Government, they are "other authorities" and amenable to judicial review. On the other hand, an organisation which is neither discharging public duties nor within the control of the Government cannot be considered as "other authority".

23. The Supreme Court from Rajasthan Electricity Board's case, supra, to till now has considered innumerable cases and wherever a particular organisation has satisfied the requirement of "other authority" as laid down by it, held it is an instrumentality of the State and amenable to judicial review to scrutinise to find out Fundamental Rights and Directive Principles are violated or not.

24. As observed by the Supreme Court, the concept of instrumentality or agency of the Government is not limited to corporations created by the statute but is equally applicable to a company or society in a given case and we have to decide on consideration in the relevant facts whether a company is the instrumentality or agency of the Government and thus an "other authority".

25. We will now deal with the other category of cases, wherein, the Supreme Court has held that the autonomous bodies or organisations are not "instrumentality of the State".

26. The Supreme Court in Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, , while considering the question whether Institute of Constitutional and Parliamentary Studies (ICPS) is State or not, held that the said Society is not a State. The objects of the society inter alia were:-

"(1) to promote and provide for constitutional and parliamentary studies with special reference to comparative studies in constitutional systems of various countries and working of the Indian Constitution and parliamentary and governmental institutions in their various aspects;

(2) to undertake study of courses and fundamental research relating to

developments in constitutional law, conventions and practices, parliamentary procedure, legislative drafting, trends in judicial interpretation and allied matters;

(3) to organise inter alia training programmes in constitutional problems and matters of current parliamentary importance;

(4) to set up a legislative research and reference service for the benefit of all interested members of the Union Parliament and State Legislatures irrespective of their party affiliations;

(5) to undertake and provide for the publication of a journal and of research papers and of books and brochures with a view to disseminate democratic values and to foster broad based civic education and awareness, and in particular, to promote study of constitutional and parliamentary affairs;

(6) to establish and maintain libraries and information services to facilitate the study of constitutional and parliamentary subjects and spread information in regard thereto;

(7) to invite as and when feasible, scholars who may or may not be members of the Society, to take advantage of the facilities offered by the Society and to benefit the Society by their knowledge and experience; and

(8) to institute appropriate fellowships, offer prizes and arrange scholarships and stipends in furtherance of the objects of the society".

The Court noticed that:

"The memorandum permitted the Society to accept gifts, donations and subscriptions of cash and securities and of any property either moveable or immovable. The rule classifies the members under heads like Founder Members, Life Members, Honorary Members, Ordinary Members, Corporate Members and Associate Members. Ordinary membership, according to the rules, would extend to Members of Parliament or of any State Legislature or those who have been or are members of the judiciary or Advocates of the Supreme Court or the High Courts or persons employed in public service or persons engaged in teaching of study of Social Sciences particularly of Political Science, Law or subjects related thereto. In the category of Honorary Members were the President, the Vice-President and the Prime Minister of India. Though the Memorandum permitted receipt of gifts and donations from outside, it is not disputed that the main source of income of the Society has been the annual Central Government grant".

The Apex Court further considering whether the respondent-organisation is "State" within the meaning of Article 12 or not, keeping in view the scope and object of the Society, held as follows:

"We have several cases of Societies registered under Societies Registration Act which have been treated as "State" but in each of those cases it would appear on analysis that either governmental business had been undertaken by the Society or what was expected to be the public obligation of the "State" had been

undertaken to be performed as a part of the Society's function. In a Welfare State, as has been pointed out on more than one occasion by this Court, governmental control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of the case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of "other authorities" in Article 12 of the Constitution. We must say that ICPS is a case of its type -- typical in many ways and the normal tests may perhaps not properly apply to test its character".

27. In *Sabhajit Tewary's case*, supra, Justice A.N. Ray, Chief Justice, speaking for the Constitutional Bench of the Supreme Court, held:

"The Council of Scientific and Industrial Research, a society registered under the Societies Registration Act is not an authority within the meaning of Article 12. The society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. The fact that the Prime Minister or the President or that the Government appoints nominees to the governing body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research and other activities of the Council towards the development of industries in the country are carried out in a responsible manner".

28. In *K.S. Ramamurthi Reddiar Vs. The Chief Commissioner, Pondicherry and Another*, , the Supreme Court was considering whether judicial or quasi-judicial authorities functioning outside the territory of India administered by the Government of India is an "authority" in terms of Article 12 of the Constitution, and held that:

The words "under the control of the Government of India" in Article 12 qualify the word "authorities" and not the word "territory" and the relevant part of Article 12 on its true interpretation would read thus: "all local or other authorities within the territory of India or all local or other authorities under the control of the Government of India".

"The control envisaged under Article 12 is control of the functions of the authorities and it is only when the Government of India can control the function of an authority that it can be said that the authority is under the control of the Government of India. Such control is possible in the case of a purely executive or administrative authority, it is impossible in the case of a quasi-judicial or judicial authority; for in the very nature of things, where rule of law prevail, it is not

open to the Government, be it the Government of India or the Government of a State, to direct a quasi-judicial or judicial authority to decide a particular matter before it in a particular manner. The Appellate Authority being quasi-judicial could not therefore be directed by the Government of India to decide a particular matter before it in a particular manner and therefore it cannot be said that it is an authority under the control of the Government of India -- N. Masthan Sahib v Chief Commissioner, Pondicherry and Another, rel. on".

29. From the principles laid down in these cases, it is evident that, though societies registered under the Societies Registration Act, are created by the Government, unless they have the characteristics as narrated in R.D. Shetty's case, supra, they will not be considered as "other authorities" under Article 12.

30. Thus the Apex Court has considered whether the organisations, Companies and Corporations are authorities within the meaning of Article 12 of the Constitution of India, after scrutinising the nature or origin, pervasive control of the State and financial assistance by the State, Rules and Bye-laws made, and power provided to such body and its control over other organisations etc. Taking these facts, we have to decide whether any organisation is an "Authority" or not, keeping in view the principles laid down by the Apex Court.

31. BEML was incorporated under the Companies Act on 11th May, 1964. The share capital of the Company was Rs. 15 Crores divided into 1,50,000 equity shares of Rs. 1,000/- each. The subscribers to the Memorandum of Association were the President of India and four other officers of the Government of India, viz., the Secretary, the Joint Secretary, the Deputy Secretary in the Ministry of Defence Production and an Under Secretary in the Ministry of Defence.

32. Under Clause 95 of the Memorandum of Association, the President of India is empowered to determine in writing the number of Directors of the Company. Under Clause 97, the Directors of the Company are to be appointed by the President and are to be paid such remuneration as the President may determine from time to time. Clause 97(3) says that the President has the power to remove any Director from office at any time in his absolute discretion. Under Clause 98 the President is empowered to authorise such of the Directors as named by him to exercise all such powers and do all such acts and things as the Company is authorised to exercise and do. Under Article 107, the President is empowered to appoint one or more of the Directors to the Office of the Chairman of the Board of Directors of Managing Directors. Article 119 empowers the Chairman to reserve for the decision of President any proposals or decisions of the Directors in any matter which, in the opinion of the Chairman, is of such importance as to be reserved for the assent of the President. Clause (b) of Article 119 specifies certain matters which are bound to be reserved for the approval of the President. Among the matters so specified are (i) all appointments to posts in the pay scale of Rs. 2,500-3,000 and above per mensem and of persons who have already attained the age of 58 years (vide Clause 119(b)(i)); (ii) winding up of the company (vide Clause 119(b)(iii)(f)). Under Article 159, the President may, from

time to time, issue such directions as he might consider necessary in regard to the exercise and performance of the functions of the company in matters involving national security or substantial public interest and in like manner may vary and annul any such direction and the Directors shall duly comply with and give immediate effect to the directions so issued by the President. Thus, not only the company is wholly owned by the Government of India, but also the latter has all pervasive control over the affairs of the company. It is contended that some of the shares of the company have been divested to private persons and therefore, it has ceased to be a Government Company. There is no dispute that some shares are divested by sale, but the Government is owning more than 51% shares. According to the definition of "Government Company", where the Government is owning 51% shares in a Company it is a Government Company. Therefore, merely because some of the shares are divested, the Company will not cease to be a Government Company unless its share holding becomes less than 50%. The position of Indian Telephone Industries Limited which is another Public Sector Undertaking engaged in the manufacture of Defence and Telecommunication equipment, is similar.

33. These two organisations are Government Companies subject to pervasive control of the Central Government. Therefore, these organisations are "other authorities" under Article 12 of the Constitution of India. In fact, as early as 1982, this Court has held that BEML is "State" in.

34. The next contention of the petitioners is that, though respondent organizations are "other authorities" within the meaning of Article 12 of the Constitution of India, the said principle cannot be extended while considering "other authorities" u/s 26(1)(c) of the impugned Act; and the expression "other authorities" in Section 26(1)(c) of the impugned Act has to be considered independently.

35. There is no dispute that the definition of "State" within Article 12 of the Constitution of India is intended to apply in Chapters III and IV of the Constitution dealing with the Fundamental Rights and Directive Principles. But there is no bar to incorporate the words "other authorities" as understood in Article 12 in any legislation framed by the State or Centre. The question therefore is: whether the words "other authority" incorporated in the Act is similar to that of Article 12 of the Constitution of India.

36. This aspect was considered by this Court in Chenna Reddy's case, *supra*, a learned Single Judge of this Court held that, employment in BEML is holding an office of profit under the authority is a disqualification u/s 11(1)(j) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (Karnataka Act 20 of 1985) (hereinafter referred to as "Zilla Parishad Act") and the same was upheld by a Division Bench of this Court in W.A. No. 669 of 1990, dated 23-10-1990. Therefore, the question whether BEML is an "other authority" or not is no more *res Integra*. By similar logic, the other organisation, i.e., the Indian Telephone Industries would also be

an "authority".

37. This Court in Chenna Reddy's case, *supra*, held that holding of office of profit in BEML amounts to holding of office under "other authority" in terms of Section 11(1)(j) of the Zilla Parishad Act. Therefore, the petitioners are disqualified from contesting the Municipal Corporation Election.

38. Now it is relevant to extract Section 11(1)(j) of Zilla Parishad Act as well as Section 26(1)(c) of the KMC Act, which reads:

Section 11(1)(j) of Z.P. Act:

"11, Disqualification for candidates.--(1) A person shall be disqualified for being chosen or nominated and for being a member of a Mandal Panchayat.-

(j) if he holds any office of profit under the Government of India, or the Government of Karnataka or the Government of any other State in India or of any local or other authority subject to the control of any of the said Governments other than such offices as are declared by rules made under this Act not to disqualify the holder";

Section 26(1)(c) of KMC Act:

"26. General disqualification for becoming a Councillor.-

(1) A person shall be disqualified for being chosen as and for being a Councillor.-

(c) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India, or under any local or other authority subject to the control of any of the said Governments other than such offices as are declared by rules made under this Act not to disqualify the holder";

Both these sections are similar and there is no difference and as stated *supra*, a Division Bench of this Court held that the office of profit in BEML is a bar for contesting elections u/s 11(1)(j) of the Zilla Parishads Act, which is similar to Section 26(1)(c) of the KMC Act. Therefore, holding of office of profit in BEML and ITI which are "other authorities" amounts to holding of office of profit in terms of Section 26(1)(c) of the impugned Act. So, the petitioners are disqualified to contest the election of Municipal Councillor.

39. Let us now consider whether the said decision requires reconsideration having regard to the contentions urged by the petitioners. At the outset, it should be noticed that the tests applicable to find out whether an "organisation" falls within the expression "other authorities" in Article 12; there is no bar in construing the words "other authority" in a statute, taking into consideration the facts and circumstances of each case, in the light of the principle laid down by the Apex Court, interpreting the words "other authority" in Article 12 of the Constitution.

40. It is contended that the words "other authority" under Article 12 of the

Constitution was explained by the Supreme Court in Rajasthan State Electricity Board's case, supra, as referring to only statutory bodies. At that time, the extended definition including Government companies expounded in Ajay Hasia's case, supra, was not available. Therefore, the expression "other authorities" in Section 26(1)(c) of the impugned Act has to be interpreted keeping in view of the judgment of the Rajasthan State Electricity Board's case, supra, and not later judgments and if such interpretation is given, the words "other authority" in the impugned section cannot be said to be similar to "other authority" in Article 12 of the Constitution.

41. The Apex Court in Rajasthan State Electricity Board's case, supra, held that the Board is a statutory body. So, it is an "other authority" in terms of Article 12 of the Constitution and amenable to judicial review to scrutinise the violation of Fundamental Rights. The judgment of the Supreme Court explaining the meaning of "other authority" is an illustrative and not exhaustive.

42. The Supreme Court dealing with interpretation of Article 12 of the Constitution of India in K.S. Ramamurthy Reddiar's case, supra, has observed as follows:-

"Further, all local or other authorities within the territory of India include all authorities within the territory of India whether under the control of the Government of India or the Governments of various States and even autonomous authorities which may not be under the control of the Government at all".

43. The principles laid down in the above judgment has been referred and approved in Rajasthan State Electricity Board's case, supra, and held that the Board is an "authority" within the meaning of Article 12 of the Constitution of India.

44. Thus, the contention of the petitioners that, there was no judgment holding that, other than the statutory body, i.e., the local or other authorities, the autonomous body are not "other authorities" is not tenable. The law laid down by the Supreme Court giving wider interpretation to the words "other authority" was there even before Rajasthan State Electricity Board's case, supra.

45. This point can be viewed in another perspective. The words "other authorities" apart from Article 12 of the Constitution, is also found in Articles 58(2) and 66(4) of the Constitution of India.

46. Article 58 of the Constitution deals with qualification for election as President of India. Article 58(2) provides that:

"A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments".

Article 66 deals with election of Vice-President of India. Article 66(4) provides:

"A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments".

47. Thus, the person holding an office under "other authority" is disqualified to contest the election of President or Vice-President of India. Article 12 of the Constitution provides definition of a "State", whereas, the above Articles deal with the disqualification for contesting election of President and Vice-President of India. The Legislature of the State or Parliamentarians are deemed to have knowledge of all the provisions of the Constitution, statutes and judgments rendered by the Courts. Therefore, the words "other authority" used in the impugned section cannot be said to have been incorporated basing on the words "other authority" in Article 12 of the Constitution. On the other hand, it can be inferred that the words "other authority" in Article 58(2) and Article 66(4) of the Constitution of India which deals with the disqualification of election to President and Vice-President of India might have influenced the Legislature to use the local and "other authority" in Section 26(1)(c).

48. In *D.R. Gurushantappa Vs. Abdul Khuddus Anwar and Others*, , the respondent was working as Superintendent, Safety Engineering Department, in the factory run by the Mysore Iron and Steel Works Limited, Bhadrawathi. His salary was more than Rs. 500/- per mensem. He contested for the Legislative Assembly Elections and declared elected. The Election Petition was filed under the Representation of the People Act, assailing the election on various grounds including the ground that the first respondent is holding an office of profit under MISL Company, which is an "authority". After contest, the election petition was dismissed. The matter was carried in appeal to the Supreme Court. The Supreme Court held that the company in which the respondent was, working came under the control of the Government and he was holding an office of profit under the company. It, however, held that, there is no disqualification for such a person to contest the election to the Legislative Assembly, under Article 191 of the Constitution of India. The Supreme Court after comparing Articles 102(1) and 191(1)(a) which deal with the disqualification for contesting of the election to the legislative assembly and parliamentary members and Articles 58(2) and 66(4) which deal with the disqualification for the election of the President and Vice-President of India, held that for contesting of election of President and Vice-President of India, a person holding of office of profit under "other authority" is disqualified as there is a specific provision under Articles 58(2) and 66(4) of the Constitution. Whereas, for contesting elections of the legislative assembly or parliamentary members, there is no disqualification in Articles 102(1) and 191(1) (a) of the Constitution of India. The Supreme Court after comparing the above articles held that, the person holding an office of profit under "other authority" is not a disqualification for the election of the legislative assembly or parliamentary

members. Thus, the Supreme Court has impliedly held that a person working in a Government Company which is a person holding office of profit in an "other authority" is a disqualification for election of the President and Vice-President of India. This judgment was there much earlier to the enactment. As stated supra, the Legislature is deemed to have the knowledge of all the provisions of the Acts and judgments of the Courts. Therefore, it is proper to say that the words "other authority" was incorporated basing on the Articles 58(2) and 66(4) of the Constitution of India and the judgment of the Supreme Court.

49. It is contended that the meaning of the words "other authority" under Article 12 confined only to Fundamental Rights and Directive Principles of State Policy and it cannot be extended to any other provisions of the Constitution, much less to any other statute.

50. At the outset, we state that, merely because the respondent organizations are "other authorities" in terms of Article 12 of the Constitution, the employees holding an office of profit under "other authority" are not disqualified. On the other hand, the Section 26(1)(c) itself provides a disqualification for the persons holding an office of profit under "other authorities". The disqualification is not made merely basing on Article 12, but the section itself provides disqualification holding an office of profit under the "other authority". In interpreting the words "other authority" in the impugned section, the question whether respondent organizations as stated supra, has held that the "BEML" is an "other authority" and we have already held that the words "other authority" mentioned in Articles 58(2) and 66(4) of the Constitution was subjected to interpretation of the judgment of the Supreme Court in D.R. Gurushanthappa's case, supra, which came to the conclusion that the organisation which got pervasive control of the State Government and other required features to interpret the words "other authorities" in terms of Article 12 can be treated as "other authorities" for the purpose of Articles 58(2) and 66(4) of the Constitution. The definition of "other authority" under Article 12 of the Constitution cannot be extended to the other provisions of the Constitution except fundamental Directive Principles and not to other statute. There is no bar to incorporate the words "other authority" in the Act taking into consideration the origin, functioning, pervasive control of the Government and rule making power and other provisions for non-compliance of the directions etc., to decide whether they are "other authority" or not. Therefore, the interpretation of the words "other authority" in Section 26(1)(c) of the KMC Act cannot be said to be an extension of the meaning of the words "other authority" in Article 12 of the Constitution of India.

51. It is nextly contended that, the KMC Act was enacted in 1976. By applying the contextual interpretation, unless it is a statutory corporation, the respondent organizations can be held as "other authorities". For this proposition, learned Counsel for the petitioner relied on a judgment of the Supreme Court in Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, , wherein the Supreme Court held:

"A statute is best understood if one knows the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. There are external and internal aids to discover the reason for a statute. The external aids are statement of objects and reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or work is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation, nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the context is no less important. For instance, "the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of an Act may well indicate that wide or general words should be given a restrictive meaning".

52. The petitioners further relied on the following observations in the decision in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, :

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear difficult than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act, No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court

construed the expression "Prize Chit" in *Srinivasa Enterprises v Union of India* and we find no reason to depart from the Court's construction".

53. There is no dispute about the propositions laid down in the above judgments.

54. The KMC Act used the word "local" or "other authority" in Section 26(1)(c) of the KMC Act, prescribing the disqualification for the persons who are holding office under the "other authorities". Interpreting similar section in Section 11(1)(j) of the Zilla Parishad Act, this Court held that the employment in BEML is an authority holding office of profit which entails a disqualification as held in *Chenna Reddy's case*, supra, which was confirmed in W.A. No. 669 of 1990, dated 23-10-1990. In both the judgments, it was considered whether BEML is an authority or not, it has been held that it is an authority. No grounds are shown before us to differ with the Division Bench judgment of this Court. It is to be noted that the Legislature used the words "other authorities" in different legislations, wherever it is required. In most of the cases, it was interpreted that the words "other authorities" is similar to "other authorities" under Article 12 of the Constitution. One of the examples is as stated supra, in Section 11(1)(j) of the Zilla Parishad Act. So, applying the principle of interpretation of the words "other authorities" u/s 26(1)(c) of the KMC Act, it has to mean only "other authority" similar to in Article 12 of the Constitution.

55. Article 243-V of the Constitution provides for Membership of Municipalities if he is so disqualified under any law made by the State. Therefore, the State is empowered to enact law prescribing disqualification. Thus, Section 26(1)(c) of the impugned Act is in consonance with the constitutional provision.

56. We have to scrutinise the nature of right to vote and right to be elected.

57. The right to vote and right to elect though fundamental to democratic policy, the same is not fundamental right nor common law right, but it is a statutory right. The right given by statute can be taken away by statute; once the right can be taken away the statute can give a restricted right.

58. In *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, , the Supreme Court while considering the nature and character of the electoral right, has approved the dicta laid down in *Jyoti Basu and Others Vs. Debi Ghosal and Others*, , which is as follows:

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation".

and held that the right to elect or to be elected is not the fundamental right and it is only a statutory right.

59. The Apex Court while approving the principle laid down in the above judgment held in *Rama Kant Pandey Vs. Union of India*, , that the right to vote or right to elect is neither a fundamental nor a civil right but was a pure and simple statutory right.

60. The Supreme Court in *Mohan Lal Tripathi v District Magistrate, Rai Bareilly and Others*, held that democracy is a concept, a political philosophy, an ideal practice by many nations culturally advanced and politically matured by resorting to governance by representatives of the people elected directly or indirectly. But elected representative to govern is neither fundamental right nor common law right but a special right created by the statutes, or a political right or a privilege by the statutes, or a political right or a privilege and not a natural, absolute or vested right. Concepts familiar to common law and equity must remain stranger to election law unless statutorily recognised.

61. From the above principles laid down in the said judgments, it is manifest that the right to elect, right to be elected are statutory creations. So, they are subject to statutory limitations. Therefore, the statute can impose any restrictions. So, disqualification prescribed for the holders of the office of profit under "other authority" is valid disqualification prescribed by Section 26(1)(c) of the KMC Act.

62. Learned Counsel for the petitioners contended that since the words "local" or "other authority" is mentioned in the Section 26(1)(c), the words "other authority" should be construed similar to "Local Authority" applying the principle of ejusdem generis rule.

63. To effectively appreciate the above contention reference has to be made to Section 26(1)(c) of the Act which we have already referred, which contemplates disqualification of holder of any of the office of profit under the Central or State Government or under "local" or "any other authority". The words referred in the above section are not synonymous with the Central Government, State Government, Local or "other authority" of different organisations. To invoke the application of ejusdem generis rule there must be distinct genus or category. The specific words must apply not to different objects of the widely different character but to something which can be called a class or kind of object, where this is lacking the rule will not apply, and mention of single species will not constitute genus. It is relevant to refer the decision of the Kings Bench in *Alien v Emerson*, wherein Asquith, J., gave examples of particular words followed by general words where the principle of ejusdem generis might or might not apply.

64. The aforesaid judgment of KB was approved by the Supreme Court in *Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd.*, , observing that the ejusdem generis or noscitur a sociis need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted.

65. The Privy Council in *United Towns Electric Company v A.G. for New*

Foundland, held that there is no room for applying the principle of ejusdem generis in the absence of any mention of the generis and mention of single species. For example; water rate -- does not constitute a genesis. This judgment was approved by Supreme Court in Rajasthan Electricity Board's case, supra. The Supreme Court after referring Craies on Statute Law and Maxwell on Interpretation of Statutes and approving the judgment of Privy Council held that ejusdem generis principle will not apply while interpreting the words "other authority" in Article 12 of the Constitution of India. An examination of Section 26(1)(c) of the Act makes it evident that there is absence of any mention of generis or single species, therefore, applying principle laid down by the Apex Court, the rule ejusdem generis will not apply for interpreting "other authority" similar to "Local Authority".

66. The principle laid down by the Apex Court manifests that to invoke the application of ejusdem generis rule there must be distinct genus or category. The specific words must apply not to different objects of the widely different character but to something which can be called a class or kind of object, where this is lacking the rule will not apply and mention of single species will not constitute genus.

67. As held above the "other authority" in Section 26(1)(c) of the Act cannot be interpreted by applying the principle of ejusdem generis, so, we are not able to accede to the contention of the Counsel for the petitioners.

68. It is fourthly contended that the control on the respondent organizations is not similar to one envisaged on Municipal Corporation by the State in the Act. Therefore, the respondent organizations cannot be deemed as "other authority".

69. The learned Counsel for petitioners has taken us through the definitions and Chapters IV, VII and IX. Chapter IV of the Act deals with the powers and functions of the "Corporation" and "other authorities". Chapter VII deals with the appointment, transfer and punishments for violation of the provisions of the Act for the officers and other employees of the Corporations, and Chapter IX deals with power of Government. There is no dispute about the control of the Government over the Corporation as envisaged in the above provisions of the Act. We have already referred the position of respondent organizations and control of the Government over the organisations giving all the details and held that in view of the pervasive control, respondent organizations is an "Authority" similar to one in Article 12 of the Constitution of India.

70. The control of the Government on different organisations vary according to the "requirements. Therefore, the scrutiny required is whether the organisation has got necessary requirements to treat it as an "Authority". The test laid down by the Supreme Court has to be applied to find out whether a particular organisation is "other authority" or not. After scrutinising, keeping in view the principles laid down by Supreme Court if the conclusion is that as the said organisation is an instrumentality of State merely because the control of the

Government on that organisation is not the same as on the Municipal Corporation, or any other body, it is not proper to say the organisation is not an authority. Therefore, the contentions of the petitioners' Counsel is not tenable.

71. The learned Counsel has also relied on the decision in *Anoop Jaiswal Vs. Government of India and Another*, , for the proposition of what is the meaning of the word "Control". There is no dispute about the principle laid down in the above judgment as held by us merely because the control is not similar is not a ground to come to conclusion that the organisation is not an "other authority".

72. The learned Counsel for the petitioners fifthly contended the definition of "Local Authority" in General Clauses Act is wider than the definition in Section 2(18) of the KMC Act. The Legislature has given the restricted meaning to "Local Authority" in the Act. Therefore, the words "other authority" is incorporated keeping in view the definition of the term "Local Authority" in the General Clauses Act which is wider, so the words "Authority" should be interpreted as per the definition in General Clauses Act.

73. This contention at the outset is not tenable, if the Legislature intended to incorporate the definition of the "Local Authority" as defined in General Clauses Act, the Legislature would have incorporated the same. When the Legislature specifically provided the definition of "Local Authority" in KMC Act, to infer that the Legislature was having in mind the definition of the "Local Authority" as under the General Clauses Act is not acceptable. If it is accepted for the purpose of arguments, it amounts to amending a statute i.e., to place the word "Local Authority" in General Clauses Act in the place of "other authority" which is not within the function of this Court.

74. The learned Counsel for the petitioners sixthly contended that when the organisation is an "Autonomous body" without full control of the Government, it cannot be said as an "Authority" and for the proposition what are the principles governing "Autonomy", the Counsel for the petitioners relied on catena of decisions.

75. In *U.P. State Electricity Board Vs. Ram Autar and Another*, , the Supreme Court dealing with an appeal filed against judgment of the High Court, wherein the Single Judge of High Court passed strictures against the Chairman of the U.P. Electricity Board for not following the direction of the Government to absorb the employees of the wound-up Corporations and Undertakings of the State. The Supreme Court held that as per Section 78-A of the Electricity (Supply) Act of 1948, the Board shall be guided by the directions of the Government on question of policy only. Therefore, the contention of the Board that the Government has no authority to direct the Board to appoint or absorb the respondent 1, and the plea of the Chairman of the Board in taking such contention before the High Court cannot be condemned and stringent observations, strictures cannot be passed. The High Court set aside observations from the judgment. The question whether "Autonomous Bodies" are "other authorities" or not has not been

considered in this case.

76. The Supreme Court in *B. Shankaranand Vs. Common Cause and Others*, , considered whether the Government can nominate Minister of Health and Family Welfare and Secretary to Department of Health as a Chairman and Member respectively to the Supreme body constituted under the AIIMS Act by harmoniously interpreting Section 4(e) and Section 6 of the said Act. The Supreme Court held that if AIIMS is an "autonomous body" and it is not a Department of Government since object of the Act is to improve excellence and high standards in all faculties of medical specialities and of treatment. The Government has got power to nominate and that will continue as a Chairman and Member respectively until they hold office. Therefore, this case is also not helpful to the petitioners.

77. We have gone through other two judgments viz., *Rakesh Ranjan Verma and others Vs. State of Biha and others*, and *Managing Director, Orissa Industrial Infrastructure Development Corporation, Bhubaneswar Vs. Sarat Chandra Patnaik and Another*, . The facts of these cases also will not throw much light on the point.

78. There is no dispute about the principle laid down by the Apex Court and the principle has to be applied according to the facts of each case. The respondent organizations are governed by the regulations and guidelines framed. We have already held that the respondent organizations are instrumentalities of the State and merely because they are "Autonomous" as far as administration is concerned, by that itself it cannot be inferred that they are not instrumentalities of the State.

79. The learned Counsel lastly contended that Section 26(1)(c) of the Act is vague, irrational and discriminatory, and violates Article 14, so it is unconstitutional.

80. The Section 26(1)(c) of the Act disqualifies a person holding office of profit under "other authorities". It is contended that the Members of Parliament and Members of Legislative Assemblies are nominated as members of the Corporation Council. Though they are holders of office of profit under Government Companies falling with "other authorities" in terms of Article 12 of the Constitution of India, they are permitted to be the nominated members of Council, whereas the persons holding office of profit in Government Company are disqualified from contesting elections to the Corporation Council. So, it is discriminatory. Article 14 of the Constitution lays down the doctrine of equality as a bed-rock of rule of Law. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment and circumstance in the same position as the varying needs of different class of persons often require separate treatment. The equality clause does not take away from the State the power of classifying persons for legitimate purposes. The Members of Parliament or State Legislatures are Public Representatives. They are made as members of

the Council by virtue of the elective post held by them. They are elected by public. Therefore, making them as Council members does not amount to making them as Councillors after election. The Constitution of India imposes a mandate on the State, to make law providing representation to Members of Parliament and State Legislatures. Members of Parliament and State Legislatures are a separate class distinct than the candidates elected to Council. Therefore, the classification made between the public representatives and others cannot be said as irrational or unreasonable. Making the MPs and MLAs as members has got nexus to the object of the Act i.e., the Public Representatives can participate in the Council Meeting to echo the voice of the people by whom they are elected. Therefore, the differential treatment conferred on two distinct classes does not amount discrimination violating Article 14. So, the equality class is not violated.

81. In *Sakhawat Ali Vs. The State of Orissa*, , the facts of the case are that the appellant was a practising Advocate and he was engaged as a legal practitioner against the Municipality. Appellant filed his nomination paper for election of Councillor of Municipality. The same was rejected on the ground that he was employed as an Advocate against the Municipality. Section 16(1)(ix) of the Orissa Municipal Act lays down that if a person wants to contest as a candidate for election, he shall not be employed as a paid legal practitioner on behalf of the Municipality or act as a legal practitioner against Municipality. It was contended that there is no prohibition for the client to contest elections whose case against Municipality is pending, whereas there is a disqualification to contest elections for a legal practitioner appearing for such client. So, this section is discriminatory and violative of Article 14 of the Constitution. The Supreme Court repelled the contention and held that it is a classification by class.

82. In *Gauri Shanker and others Vs. Union of India and others*, , it is observed:

"Para 9 "Legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution".

The principle laid down in the above decisions squarely supports our view. Therefore, the contention that the provision is discriminatory is not tenable.

83. It is further contended that sub-section empowered the Government to make rules exempting from disqualification to the holders of office of profit under "other authorities" or Government and therefore, the power conferred on the Government is vague, unguided, therefore it is arbitrary. The power is provided to the Government to frame rules for giving exemption from disqualification. No rules are framed till now and no such rules are brought to our notice and no instance of granting exemption is brought to our notice.

84. Learned Counsel for petitioners contended that about four or five years back the persons holding office of profit were permitted to contest elections by their employers and they participated in the elections and were elected, now refusing them to contest elections is arbitrary. Even accepting the contention of the learned Counsel for petitioner that the employer permitted them to contest elections and participated in the elections, the same cannot be a precedent when the permission granted is against a statute. A permission granted wrongly against the statute for contesting elections cannot be taken as a legal when statute bars it. It is settled principle of law that any invalid Act cannot be taken as basis to contend the treatment as discriminatory.

85. The Act came into force in the year 1977. The Act has been since then in force till now. This Court interpreted that the office of profit under B.E.M.L. amounts to holding office under "other authority". Therefore, the person is disqualified from contesting. In Chenna Reddy's case, supra, the same has been upheld by Division Bench in judgment in W.A. No. 669 of 1990, DD: 23-10-1990. The Legislature yet has not amended the section, to remove the said disqualification. The similar disqualifications are there in Section 12(g) and Section 128-H and Section 167-G of the Karnataka Panchayat Raj Act for the election of Adhyaksha and Upadhyaksha and that election of the member of the Municipality in Section 16(1)(c) of the Karnataka Municipalities Act.

86. As per Article 243-B of the Constitution the State Legislature is competent to enact law providing for disqualification for the election of Councillor. It is held providing disqualification for contest of elections is legislative prerogative and all wisdom of the Legislature (by the Constitutional Bench-SC) held in Kirpal Singh, M.L.A. Vs. Uttam Singh and Another, . Justice Chinoappa Reddy, in the affricated decision, speaking for the Apex Court has considered the contention whether the Article 191(1)(a) can be extended to the employees of the State Corporation also by enacting the appropriate laws under Article 191(1)(e) of the Constitution. In the said decision it is observed as follows:

"Or are employees of Public Corporations to be treated differently from employees of the Government? Are not some of them in a better position to exert undesirable pressure than Government employees? On the other hand, are a tremendously large number of employees of Public Corporations to be denied the opportunity of being chosen, as representatives of the people? Do all the considerations applicable to Government employees equally apply to employees of Public Sector Undertakings? Is there no distinguishing feature? Are a large mass of highly or moderately literate people to be denied the right to speak for the people? Is the right to be elected, to be confined, without meaning, any disrespect to any one to the professional politicians only? These are some of the vital questions posed and which require to be answered. The answer should be best given by the elected representatives of the people themselves....".

This makes it clear that the policy to provide disqualification and to which section of people it has to be provided and for whom it is not to be provided are all the

questions to be decided by the Parliament and Legislatures. This principle supports our view.

87. The interpretation of the statute should keep pace with the change of times. Therefore, interpretation of the words "other authority" keeping in with the tune of the intention of the legislature is quite proper and justified.

88. The petitioners challenged the constitutional validity of Section 26(1)(c) of the impugned Act on various grounds. As stated supra, we have held that the provision is not discriminatory, arbitrary or unreasonable. There is no dispute that the Legislature is competent to enact law as per the constitutional provisions. Therefore, it is settled principle of law that a provision of statute cannot be struck down except on the ground of legislative competency and violation of the constitutional provisions by exercising judicial review. Our view is fortified by the judgment of the Supreme Court in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, . Justice Jeevan Reddy speaking for the Court considering the constitutional validity of *Andhra Pradesh Prohibition Act, 1995 (Act 35 of 1995)*, has considered the scope of exercise of judicial review for striking off the enactment, and held as follows:

"Sri Rohinton Nariman submitted that inasmuch as a large number of persons falling with the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in *State of Tamil Nadu and Others Vs. Ananthi Ammal and Others*, . Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions on this behalf. In the United Kingdom, the Parliament is supreme. There are no limitations upon the power of the Parliament. No Court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal Government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part I of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness--concepts inspired by the decisions of United States Supreme Court. Even in U.S.A. these concepts and in particular, the concept substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive

due process). The main criticism against the ground of substantive due process being that it seeks to set up the Courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary (An expression used widely and rather indiscriminately -- an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J said in *Hattie Mac Tiller v Atlantic Coastline Railroad Company*. "The phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, indiscriminately used to express different and sometimes contradictory ideas", said the learned Judge) or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom".....It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted....".

89. In view of the above decision, Section 26(1)(c) of impugned Act cannot be declared as unconstitutional on the other grounds urged by the petitioners.

90. The Division Bench made a reference to this Full Bench on the premises of the judgment in *Satrucharla Chandrasekhar Raju's* case, *supra*, taking a different view from the judgment in *Bihnrilal Dobray's* case, *supra*.

91. In *Biharilal Dobray's* case, *supra*, the Supreme Court considered whether the Assistant Teacher of Basic Primary School run by the Uttar Pradesh Board of Basic Education is holding of office of profit under premises or not. The Supreme Court has considered the holding of office of profit in a school under the control of Uttar Pradesh Board is a disqualification under Article 191(1)(a) of the Constitution. The Apex Court referred the Uttar Pradesh Basic Education Act, 1972 (U.P. Act No. 34 of 1972) and the Bill, i.e., Uttar Pradesh Basic Education Bill, 1972, in pursuance of which, Act was passed; after referring all the provisions, the Court found that the Board for all practical purposes is a

department of the Government and its autonomy is negligible. Therefore, the teacher who is holding an office of profit in a Primary School controlled by the Board is holding an office under the State Government and so his nomination was right to be rejected.

92. The Supreme Court in *Satrucharla Chandrasekhar's* case, *supra*, has considered whether a teacher working in a Primary School run by the Integrated Tribal Development Agency (ITDA) is holding an office of profit under State or not.

93. The Apex Court considered the earlier judgments of the Courts in:

- (i) *Ravanna Subanna Vs. G.S. Kaggeerappa*, .
- (ii) *Maulana Abdul Skakur v Rikhab Chand*.
- (iii) *M. Ramappa Vs. Sangappa and Others*, .
- (iv) *Gopala Kurup Vs. Samuel Arulappan Paul and Others*, .
- (v) *Kona Prabhakara Rao Vs. M. Seshagiri Rao and Another*, .
- (vi) *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others*,

and laid down the guidelines for determining whether a person holding an office of profit is holding of office under State or not, and held:

"(1) The power of the Government to appoint a person in office or to revoke his appointment at the discretion. The mere control of the Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature.

(2) The payment from out of the Government revenues are important factors in determining whether a person is holding an office of profit or not of the Government. Though payment from a source other than the Government revenue is not always a decisive factor.

(3) The incorporation of a body corporate and entrusting the functions to it by the Government may suggest that the statute intended it to be a statutory corporation independent of the Government. But 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, but in substance, it may be the just alter ego of the Government itself.

(4) The true test of determination of the said question depends upon the degree of control, the Government has over it, the extent of control exercised by every other bodies or committees, and its composition, the degree of its dependence on the Government for its financial needs and the functional aspect, namely, whether body is discharging any important governmental function or just some function which is merely optional from the point of view of the Government".

94. The Apex Court, keeping in view the above principles and considering the facts of that case, held:

"The Government has some control over the ITDA which is set up as a project, since it provides funds and sanctions the posts. The District Collector is appointed as Project Officer and some officers are ex officio members of the ITDA which carries out the object of providing the compulsory education in tribal area. But the ITDA is a registered society having its own constitution. Though the Project Officer is the District Collector, he acts as a different entity. The power to appoint or to remove teachers is not with the Government but with the Project Officer. The Government have control over the Appointing Authority but has no direct control over the teachers. The small post that appellant holds in ITDA is only that of a teacher who is directly under the control of the Project Officer. In such a situation the question of any conflict between his duties and interests as an elected member does not arise since it cannot be said that he, as a teacher, can be subjected to any kind of pressure by the Government which has neither the power to appoint him nor to remove him from service".

95. Taking all these facts into consideration the Apex Court expressed a view that the appellant cannot be held to be holding an office of profit under the Government.

96. The facts of the above case are quite different from the facts of *Biharilal Dobray's* case, *supra*. Therefore, there is no change of position in law after the above judgments of the Supreme Court which confine to their own facts.

97. Therefore, the reference is answered accordingly.

ORDER

R.V. Raveendran, J.

W.P. Nos. 43146 of 1995 and 28766 and 28842 of 1996

1. The petitioners are employees of Bharat Earth Movers Ltd. [BEML] and Indian Telephone Industries Ltd. [ITI], which are two public sector companies answering the definition of "Government Company" u/s 617 of the Companies Act, 1956.

2. Till 1992, BEML was granting permission to its employees to contest elections to Village Panchayat Local Bodies/Municipalities/Corporations, subject to the condition that such functioning as a member of the Local Authority will not interfere with the performance of their duties in the company. By general bulletin dated 22-10-1992, it was notified that no permission will be granted to the employees to contest general elections or Municipal Panchayat Elections, having regard to Section 16(1)(c) of the Karnataka Municipalities Act, 1864 (similar to Section 26(1)(c) of the Karnataka Municipal Corporations Act, 1976] and Article 191(1)(a) of the Constitution. In pursuance of it, BEML has refused permission to petitioner in W.P. No. 43146 of 1995 to contest the election to the Council of Bangalore Mahanagara Palike ["BCC", for short]. Hence, he has challenged the

said bulletin dated 22-10-1992 and consequential refusal.

3. Petitioners in W.P. Nos. 28766 and 28842 of 1996 are employees of ITI. On the basis of a note dated 19-12-1995, issued by the State Election Commission, the nomination of petitioner in W.P. No. 28766 of 1996 in regard to BCC election was rejected u/s 26(1)(c) of the Karnataka Municipal Corporations Act, 1976 ("Act" or "KMC Act", for short). The petitioners in these petitions have sought the following declaratory reliefs, apart from consequential reliefs:

(i) The petitioners, as employees of ITI, are entitled to contest the election to the office of Councillors of BCC; and

(ii) Section 26(1)(c) of the KMC Act is inapplicable to employees of Public Sector or Government Companies, who want to contest elections to BCC; or alternatively Section 26(1)(c) of the KMC Act, insofar as it disables or disqualifies an employee of a Government Company from contesting elections to Municipal Corporation, is invalid and inoperative, being violative of Article 14 and the basic schedule of the Constitution.

4, Thus, two questions arise for decision:

(a) Whether Section 26(1)(c) of the KMC Act, is constitutionally valid;

(b) Whether Section 26(1)(c) of the KMC Act disqualifies employees of Government Companies/Public Sector Undertakings, from being chosen as Councillors of Municipal Corporations.

While fully agreeing with the reasoning and decision [of learned Acting Chief Justice] on the first question, with respect, I am unable to agree that Government Companies (like BEML and ITI) fall under the expression "other authority, subject to the control of Government", used in Section 26(1)(c) of the Act and therefore its employees are disqualified for being chosen as Councillors. I will briefly indicate the reasons therefore.

5. Section 25 of the KMC Act read with Sections 22 and 23 of the said Act and Sections 16 and 19 of the Representation of the People Act, 1950, provides that every adult citizen of India [not of unsound mind], whose name is included in the Electoral Roll of any division of the city is qualified for election as a Councillor. Section 26 contains the disqualifications for becoming a Councillor. A right to contest elections, though not a fundamental or common law right, it is a statutory right fundamental to democracy. A common man, may consider the right to own property or the right to participate in elections, to be as important as the fundamental rights. The right of every citizen to elect the candidate of his choice or to offer himself as a candidate for election, are the most cherished rights in a democratic form of Government. The mere fact that such rights are not fundamental rights, does not make them any less important. Such a valuable right, when statutorily granted to all citizens, cannot be abridged or taken away, except by express provision. Any provision which seeks to take away such a valuable right, will have to be strictly construed. Unless the intention to exclude

is specific and unambiguous, it is not possible to deny any category of citizens, the right to elect or be elected, which is conferred by the statute. It should also be borne in mind while construing any provision relating to disqualification of employees of Government or quasi-governmental authorities that the object of such disqualifying provision is to avoid conflict between duty and interest and to eliminate the misuse of official position to advance private benefit and to avoid likelihood of influence to promote personal advantage. Section 26(1)(c) should be read, understood and interpreted in this background.

6. Section 26(1)(c) provides that a person shall be disqualified for being chosen as and for being a Councillor, "if he holds any office of profit under the Government of India or the Government of any State, specified in the First Schedule to the Constitution of India or under any local or other authority, subject to the control of any of the said Governments other than such offices, as are declared by rules made under this Act, not to disqualify the holder".

6.1. The term "local authority" is defined in Section 2(18) of the Act as meaning a Municipal Corporation, a Municipal Council, Notified Area Committee, Sanitary Board, Development Authority, City Improvement Board, Town Improvement Board, Zilla, Panchayat, Taluk Panchayat and Gram Panchayat, constituted under any law for the time being in force.

6.2 The term "other authority" is not defined in the Act. It is also not defined in the Karnataka General Clauses Act, 1899 or any other statute. There is also no judicial interpretation of the expression "other authority", when used with reference to disqualification of the employees of such institutions, to contest elections.

6.3 The Cambridge International Dictionary of English defines an "authority" as a group of persons with official responsibility for a particular area of activity and having a moral or legal right or ability to control others.

6.4 The expression "Authority" in its etymological sense means "a Body invested with power to command or give an ultimate decision, or enforce obedience or having a legal right to command and be obeyed". Webster's Dictionary of the English Language, defined "authorities" as "official bodies which control a particular department or activity, especially of the Government". The expression "other authorities" has been explained as "authorities entrusted with a power of issuing directions, disobedience of which is punishable as an offence" or "bodies exercising legislative or executive functions of the State" or "bodies which exercise part of the sovereign power or authority of the State and which have power to make rules and regulations and to administer or enforce them to the detriment of the citizens".

7. In the absence of any statutory definition or judicial interpretation to the contrary, the normal etymological meaning of the expression, has to be accepted as the true and correct meaning. By applying such meaning, a Government Company carrying on commercial activities, incorporated under a statute

[Companies Act] which does not have any power of making rules or regulations binding as law, nor the power to administer or enforce such rules or regulations against the citizens, cannot be considered as an "authority".

8. The respondents contended that having regard to the decision of the Supreme Court in D.R. Gurushanthappa's case, *supra*, it should be inferred that the employees of a Government Company were "employees of other authority subject to the control of Government". In that case, the question that arose for consideration was whether a candidate who was elected to Mysore Legislative Assembly was disqualified under Article 191(1)(a) of the Constitution, having regard to the fact that he was on the date of scrutiny, employed as Superintendent in the factory run by Mysore Iron and Steel Works Ltd. He had become an employee of Mysore Iron and Steel Works, when it was a Government Department. In 1962, a company (Mysore Iron and Steel Limited) was registered under the Companies Act, 1956 and the said company took over the Mysore Iron and Steel Works from the Government. The company so formed was a Government company, fully controlled by the company. The said candidate continued as an employee of the company, after the factory was taken over by the company. His election was challenged on the ground that as he was a Government servant when he was originally appointed and as there was no fresh contract with the newly formed company, he continued to be Government servant. Alternatively, it was contended that even if he ceased to be a Government servant, he still continued to hold an office of profit under the Government of Mysore, though technically he was in the employment of the company. Article 191(1)(a) of the Constitution, which was considered by the Supreme Court in that case, provided that a person holding any office of profit under the Government of India or the State Government, was disqualified for being chosen as a member of the Legislative Assembly. The question whether an employee of an "other authority subject to the control of the Government" was disqualified, never arose for consideration. The Supreme Court held that the company came under the control of the Government and the candidate who was holding an office of profit under the company, but he did not incur disqualification under Article 191(1)(a). The Supreme Court referred to the distinction between disqualification under Articles 58(2) and 66(4) on the one hand and disqualification under Articles 102(1) and 191(1)(a) on the other and observed as follows:

"In this connection, a comparison between Articles 58(2) and 66(4) and Articles 102(1) and 191(1)(a) of the Constitution is of significant help. In Articles 58(2) and 66(4) dealing with eligibility for election as President or Vice-President of India, the Constitution lays down that a person shall not be eligible for election if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments. In Articles 102(1)(a) and 191(1)(a) dealing with membership of either House of Parliament or State Legislature, the disqualification arises only if the person holds any office of profit under the

Government of India or the Government of any State other than an office declared by Parliament or State Legislature by law not to disqualify its holder. Thus, in the case of election as President or Vice-President, the disqualification arises even if the candidate is holding an office of profit under a local or any other authority under the control of the Central Government or the State Government, whereas, in the case of a candidate for election as a member of any of the Legislatures, no such disqualification is laid down by the Constitution if the office of profit is held under a local or any other authority under the control of the Governments and not directly under any of the Governments. This clearly indicates that in the case of eligibility for election as a member of a Legislature, the holding of an office of profit under a corporate body like a local authority does not bring about disqualification even if that local authority be under the control of the Government. The mere control of the Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the legislature in the manner in which such disqualification comes into existence for being elected as the President or the Vice-President.....

It also appears to us that it was in view of this limited application of the disqualification laid down in Articles 102(1)(a) and 191(1)(a) of the Constitution that Parliament made an additional provision in Section 10 of the Act by laying down that "a person shall be disqualified if and for so long as he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share". It is to be noted that the Parliament, in enacting this section, limited the disqualification to a person holding the office of a managing agent, manager or secretary of a company and not to other employees of the company. This provision, thus, gives two indications as to the scope of the disqualification laid down in Articles 102(1)(a) and 191(1)(a) of the Constitution. One is that the holding of an office in a company, in the capital of which - the Government has not less than 25% share is not covered by the disqualification laid down in Articles 102(1)(a) and 191(1)(a) as, otherwise, this provision would be redundant. The second is that even Parliament when passing the Act, did not consider it necessary to disqualify every person holding an office of profit under a Government Company, but limited the disqualification to persons holding the office of managing agent, manager or secretary of the company. The fact that the entire share capital in the company in the case before us is owned by the Government does not, in our opinion make any difference".

What is extracted above will clearly show the question whether a Government company is an "other authority" and whether an employee of a Government company was disqualified to contest elections having regard to a ban in regard to employees of "other authorities under the control of the Government" did not arise at all for consideration in Gurushanthappa's case, *supra*, nor decided. The said decision is, therefore, of no assistance.

9. The respondents next contended that the expression "other authorities" has been interpreted in Ajay Hasia's case, supra, and Som Prakash's case, supra, and the plethora of decisions following them, with reference to Article 12 of the Constitution and in the absence of any judicial interpretation in the context of Section 26(1)(c) or other similar provisions, the interpretation under Article 12 should be applied; and consequently it has to be held that Government Companies are "other authorities".

9.1 In Ajay Hasia's case, supra, a Constitution Bench of the Supreme Court held that Government companies are authorities within the meaning of Article 12. The Supreme Court held:

"We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company or company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute, whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or agency of the Government so as to come within the meaning of the expression "authority" in Article 12".

9.2 In Som Prakash's case, supra, rendered by another Bench on the same day as Ajay Hasia's case, supra, the Supreme Court reiterated that a Government Company was an "other authority" under Article 12. These two decisions have been followed in several other decisions and virtually all Government Companies have been held to be other authorities for purpose of Article 12. In fact BEML has also been held to be as other authority by this Court in T.G. Srinivasa Murthy, etc., etc. Vs. Bharat Earth Movers Ltd. etc., etc., .

9.3 There can be no two views that a Government Company is "other authority" for purpose of Article 12, as held in Ajay Hasia's case, supra, and other cases, if it is an instrumentality or agency of the Government.

10. But, the question is whether the meaning given to the expression "other authorities" for the purpose of Article 12, could be applied or extended to the expression "other authority" in Section 26(1)(c) of the KMC Act. It should be remembered that expanded and widened definition of the expression "other authority" in Article 12, is only for the purpose of extending the enforcement of fundamental rights against instrumentalities or agencies of the Government.

There is no question of enforcement of fundamental rights in this case. The question is whether an employee of a Municipal Corporation is barred from contesting elections for being elected as Councillor of a Municipal Corporation. There is absolutely no connection or similarity of purpose between Article 12 and Section 26(1)(c). In such circumstances, the meaning assigned to the expression "other authorities" in Article 12 cannot be extended to the said expression used in Section 26(1)(c) of the KMC Act. An elaboration of the reasons for this conclusion is necessary to assess their impact on the point at issue.

11. Re: Reason (i):

11.1 The several decisions which have included Government Companies, within the scope of "other authorities" for the purpose of Article 12, have made it clear that such inclusion, is only for the purpose of Parts III and IV of the Constitution and not to apply to the said expression, when used in other places or other contexts.

11.2 The meaning initially assigned to the expression "other authorities" even under Article 12, was compatible with the etymological meaning of that expression. But, over the course of time, Courts have gradually expanded the scope of this expression, only for purposes of Article 12, to prevent erosion of the efficacy of the fundamental rights.

11.3 Initially the expression "other authorities" was read ejusdem generis with those named in Article 12, that is Governments, Legislatures and local authorities and it was held that the expression could only mean a body which exercised legislative and executive function of a State or an Instrumentality through whom the State exercised its legislative or executive powers. Thus, it was held that bodies which did not exercise "sovereign powers" were not authorities -- The University of Madras Vs. Shantha Bai and Another, , B.W. Devadas v Selection Committee, Karnataka Engineering College; and Krishan Gopal Ram Chand Sharma Vs. Punjab University and Another, .

11.4 The next stage of expansion was made in Rajasthan Electricity Board's case, supra, wherein the Supreme Court rejected the ejusdem generis interpretation. It held that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law, even if some of the powers conferred may be for the purpose of carrying on commercial activities. It held that every authority created by a statute and functioning within the territory of India, or under the control of the Government was an authority under Article 12; and bodies created for the purpose of promoting the educational and economic interests of the people, will also fall under the ambit of Article 12. This position was reiterated in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , dealing with three statutory corporations, that is ONGC, LIC and Industrial Financial Corporation. The Court

took note of the fact that these bodies were statutory corporations and not companies.

11.5 The last expansion was, by inclusion of Government companies and societies under the deep and pervasive control of the Government, in the ambit of other authorities, in Ajay Hasia's case, supra and Som Prakash's case, supra, on the foundation laid in Ramana Dayaram Shetty's case, supra. It was held that an instrumentality or agency of the Government will fall within the scope of "other authorities", irrespective of the fact whether the corporation was created by the statute or under a statute. Till the decision in Ajay Hasia's case, supra, and Som Prakash's case, supra, (both rendered on 13-11-1980), based on R.D. Shetty's case, supra, a Government company was never considered as "other authority" for purposes of Article 12.

11.6 The reason for expanding the scope of "other authorities" in Article 12 to include Government companies is stated thus in Ajay Hasia's case, supra:

"While considering this question it is necessary to bear in mind that an authority falling within the expression "other authorities" is, by reason of its inclusion within the definition of "State" in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the fundamental rights enshrined in Part III of the Constitution. We must, therefore, given such an interpretation to the expression "other authorities" as will not stultify the operation and reach of the fundamental rights by setting up an agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance to human rights are at stake, functional realism and not facial cosmetics must be diagnostic tool, for constitutional law must seek the substance and not the form".

"..... Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases, "the true owner is the State, the real operator is the State and the effective controller is the State and accountability for its actions to the community and the Parliament is of the State". It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the

corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic evil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now, it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the fundamental rights, it would lead to considerable erosion of the efficiency of the fundamental rights, for in that event, the Government would be enabled to override the fundamental rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The fundamental rights would then be reduced to little more than an idle dream or a promise of unreality. It must be remembered that the fundamental rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The Courts should be anxious to enlarge the scope and width of the fundamental rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the fundamental rights.....".

". . . .To use the corporate methodology is not to liberate the Government from its basic obligation to respect the fundamental rights and not to override them. The mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of red-tapism and slow motion but by doing so, the Government cannot be allowed to pay truant with the basic human rights. Otherwise, it would be the easiest thing for the Government to assign to a plurality of corporations almost every State business such as Post and Telegraph, TV and Radio, Rail, Road and Telephones--in short every economic activity -- and thereby cheat the people of India out of the fundamental rights guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions, it will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. We cannot by a process of judicial construction allow the Fundamental Rights to be

rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post Menaka Gandhi era. It is the Fundamental Rights which along with the Directive Principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the Government and in effect an incarnation of the Government", the Court must not allow the enforcement of Fundamental Rights to be frustrated by taking the view that it is not the Government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the Government, it must be held to be an "authority" within the meaning of Article 12 and hence subject to the same basic obligation to obey the Fundamental Rights as the Government".

The reason for including Government Companies in other authorities for purposes of Article 12 is stated in Som Prakash's case, *supra*, thus:-

"Imagine the possible result of holding that a Government Company, being just an entity created under a statute, not by a statute, it is not "State". Having regard to the directive in Article 38 and the amplitude of the other Articles in Part IV Government may appropriately embark upon almost any activity which in a non-socialist republic may fall within the private sector. Any person's employment, entertainment, travel, rest and leisure, hospital facility and funeral service may be controlled by the State. And if all these enterprises are executed through Government companies, bureaus, societies, councils, institutes and homes, the citizen may forfeit his fundamental freedoms vis-a-vis these strange beings which are Government in fact but corporate in form. If only fundamental rights were forbidden access to corporations, companies, bureaus, institutes, councils and kindred bodies which act as agencies of the administration, there may be a breakdown of the rule of law and the constitutional order in a large sector of governmental activity carried on under the guise of "jural persons". It may pave the way for a new tyranny by arbitrary administrators operated from behind by Government but unaccountable to Part III of the Constitution. We cannot assent to an interpretation which leads to such a disastrous conclusion unless the language of Article 12 offers no other alternative".

In fact, in the case of Som Prakash, *supra*, while referring to R.D. Shetty's case, *supra*, the Supreme Court observed "there is no doubt that Bhagwati, J., broadened the scope of State under Article 12".

11.7 It is thus clear that the widening of the scope of "other authorities" was only to enlarge the scope of fundamental rights by bringing within its sweep every instrumentality or agency through which the Government acted, so as to subject all its activities to the basic obligation of fundamental rights, and not for other purposes. Ajay Hasia's case, *supra*, itself made it clear that a juristic entity may be an "authority" and therefore "State" within the meaning of Article 12

only for the purpose of Parts III and IV and not for the purpose of Part XIV or any other provision of the Constitution.

11.8 In *Hindustan Steel Works Construction Ltd. Vs. State of Kerala and others*, , the Supreme Court while considering the question whether Hindustan Steel Works Construction Limited which is a Government company wholly owned and controlled by the Central Government, was "an establishment or institution of Government of India" and thus excluded from the purview of the Kerala Construction Workers Welfare Funds Act; 1989, made clear that inclusion of Government Companies in "other authorities" for purposes of Article 12, cannot be extended to other enactments/spheres. The Supreme Court held:--

".....it appears to us that the appellant-company cannot be held to be a department of the Government. There may be a deep and pervasive control of the Government over the appellant-company and the appellant-company, on such account may be an instrumentality or agency of the Central Government and as such a "State" within the meaning of Article 12 of the Constitution. Even though the appellant-company is an agency or instrumentality of the Central Government, it cannot be held to be a department or establishment of the Government in all cases. Such instrumentality or agency has been held to be a third arm of the Government in *Ajay Hasia's* case, *supra*, but it should not be lost sight of that it was only in the context of enforcement of fundamental rights against the action of the Government and its instrumentalities or agencies it was held that such agencies were the third arm of the Government and they cannot avoid constitutional obligation. There is no question of enforcing any fundamental right in the instant case. On the contrary, the question of protecting the welfare of the employees vis-a-vis the instrumentality or agency of the Central Government under the Welfare Funds Act is to be kept in mind for the purpose of deciding the rival contentions of the parties. If Section 2(c) and (e) of the Welfare Funds Act are taken into consideration, it will be quite apparent that the legislature has not intended to exclude the Government company or the statutory corporations from the purview of the Welfare Funds Act".

11.9 The inclusion of Government companies in the widened ambit of "other authorities" for purposes of Article 12 cannot be extended while construing disqualifications for contesting elections was specifically considered by the Supreme Court in *Satrucharla's* case, *supra*, and the Supreme Court made the following clinching observations:

"It is also necessary to bear in mind that the Government is undertaking several projects and activities including commercial activities through the corporations and local bodies exercising some control over such corporations or bodies. In that view of the matter they may come within the meaning of the "State" as envisaged in Article 12 but that may not be a decisive factor in deciding the issue. As a matter of fact Section 10 of the Representation of People Act as well as Article 58(2) of the Constitution of India do indicate that all persons employed in such undertakings, corporations or local bodies cannot be deemed to suffer

disqualification for contesting the elections except to the extent indicated therein. This aspect also has been considered in some of the above-mentioned decisions. If a strict and narrow construction is to be applied that amounts to shutting off many prominent and other eligible persons to contest the elections which forms the fundamental basis for the democratic set up. Therefore, several factors as indicated above depending upon the facts of each case have to be taken into consideration in deciding whether a particular person is disqualified by virtue of his holding an office is under the Government.....".

11.10 Therefore, the inescapable conclusion is that the series of decisions dealing with Article 12 and holding that Government companies are "other authorities" are of no assistance to ascertain the meaning of "other authorities" in Section 26(1)(c).

11.11 In view of the above, it is unnecessary to examine the contention of the petitioners that BEML and ITI should be held to be not "Authorities" even under Article 12, having regard to the disinvestment policy of the Government and increasing public participation in the share capital of these companies and the subsequent decisions of the Supreme Court in Tekraj Vasandi's case, supra and Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], , wherein the Supreme Court has held that Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with Government within the sweep of the expression "other authorities".

12. Re: Reason (ii):

12.1 The meaning to be assigned to words used in a statute should be contextual and not with reference to meaning assigned to the words in a provision of the Constitution of India or other statute which is not *pari materia*. To interpret the expression "other authorities" used in Section 26(1)(c) of the Act, we have to examine the context in which the said section was enacted and how the said expression was understood at that time [in the year 1976].

12.2 In Reserve Bank of India's case, supra, the Supreme Court held:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. . . The interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. . .".

12.3 In Utkal Contractors and Joinery Private Limited's case, supra, the Supreme Court held:

"A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. . . .The setting and the pattern are important. . . .Again, while the words of an enactment are important, the context

is no less important".

The Supreme Court cited the following passage from Maxwell's Interpretation of Statutes:

"General words and phrases, therefore, however wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act".

12.4 The following passages from Crawford's "Statutory Construction", are relevant:

"But where the several statutes deal with entirely different subjects, they can have no possible bearing on the construction of each other (Page 429, Para 229)".

"All extrinsic aids, including other statutes, however should be considered and weighed, for danger lurks in simply examining, one of such aids and determining the legislative intent from it alone (Page 448, Para 237)".

"When it becomes necessary to resort to extraneous matters in order to ascertain the meaning of a statute, the Court may properly refer to what is generally known as contemporaneous circumstances. Such circumstances include the history of the times existing when the law was enacted, the previous state of the law, the evils intended to be corrected, and even, according to some cases, the habits and activities of people. Generally, these circumstances may be defined as the conditions under which the statute was enacted (Pages 366 and 367, Para 210)".

12.5 The expression "Government Corporation" which was understood to refer to a Statutory Corporation till the decision in R.D. Shetty's case, supra, in 1979, was thereafter given the wider meaning as including Government companies also. On the other hand in S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, , the term "Corporation" which would normally include private Corporations also, was given a narrow legal connotation as meaning a Corporation created by the Legislature and not a body or society brought into existence by an act of a group of individuals, for the purpose of Section 21(12) of the Indian Penal Code.

13. Therefore, the expression "other authority" should be interpreted with reference to the context of elections to Municipal bodies and disqualifications therefrom. The expression should also be understood with reference to the normal meaning that was attached to that expression in 1976 when the statute was enacted and not with reference to subsequent changes.

13.1 What should be the approach in interpreting provisions relating to disqualification, has been indicated by the Supreme Court in Madhukar G.E. Pankakar Vs. Jaswant Chobbildas Rajani and Others, :

"After all, all law is a means to an end. What is the legislative end here in disqualifying holders of "offices of profit under Government"? Obviously to avoid

a conflict between duty and interest, to cut out the misuse of official position to advance private benefit and to avert the likelihood of influencing Government to promote personal advantage. So this is the mischief to be suppressed. At the same time we have to bear in mind that our Constitution mandates the State to undertake multiform public welfare and socio-economic activities involving technical persons, welfare workers and lay people on a massive scale so that participatory Government may prove a progressive reality. In such an expanding situation, can we keep out from elective posts at various levels many doctors, lawyers, engineers and scientists, not to speak of an army of other non-officials who are wanted in various fields, not as full time Government servants but as part-time participants in people's projects sponsored by Government? For instance, if a National Legal Services Authority funded largely by the State comes into being, a large segment of the legal profession may be employed part-time in the ennobling occupation of legal aid to the poor. Doctors, lawyers, engineers, scientists and other experts may have to be invited into local bodies, legislatures and like political and administrative organs based on election if these vital limbs of representative Government are not to be the monopoly of populist politicians or lay members but sprinkled with technicians in an age which belongs to technology. So, an interpretation of "office of profit" to cast the net so wide that all our citizens with specialities and know-how are inhibited from entering elected organs of public administration and offering semi-voluntary services in para-official, statutory or like projects run or directed by Government or Corporation controlled by the State may be detrimental to democracy itself. Even athletics may hesitate to come into sports councils if some fee for services is paid and that proves their funeral if elected to a panchayat. A balanced view even if it involves judicious irreverence" to vintage precedents, is the wiser desideratum".

13.2 The following observation of the Constitution Bench in Kirpal Singh's case, *supra*, regarding intendment of provisions relating to disqualification, made in the context of Article 191(1)(a) are of relevance:

"The clear and undoubted object of Article 191(1)(a) to (e) and the provisions of the Representation of the People Act (including Section 10) is the preservation of the purity and integrity of the election process by preventing Government or State employees from taking part in the elections. But, Section 10 appears to confine the disqualification insofar as it relates to the employees of Government companies to the top-brass" only if such an uncouth expression may be allowed to creep into the judgment of a Court. Nowadays the activities of the State are so manifold and prolific that the State has been forced in the interests of better management and administration and in order to further the Directive Principles of State Policy, to set up various corporations which are but mere instrumentalities of the State. Is the principle of Article 191(1)(a) then to be extended to employees of State Corporations also by enacting appropriate laws under Article 191(1)(e)? Or are employees of Public Corporations to be treated differently from employees of the Government? Are not some of them in a better position to exert undesirable pressure than Government Employees? On the

other hand, are a tremendously large number of employees of Public Corporations to be denied the opportunity to being chosen, as representatives of the People? Do all the considerations applicable to Government employees equally apply to employees of Public Sector Undertakings? Is there no distinguishing feature? Are a large mass of highly or moderately literate people to be denied the right to speak for the public? Is the right to be elected, to be confined, without meaning any disrespect to anyone to the professional politicians only? These are some of the vital questions posed and which require to be answered. The answer should be best given by the elected representatives of the people themselves. We are not shirking the decision of these questions but our decision can only be confined to interpretation. Not so, Parliament which can decide upon the policy. That is why, we recommend to the Government to have the matter examined by the Law Commission very early. When a suitable occasion arises in the future, we will, of course, deal with the matter, probably helped by new legislation".

13,3 It is also of significance to notice that when the Act was enacted in 1976, the prevalent judicial view was the term "other authorities" could refer only to statutory corporations or bodies and not to Government Companies (even with reference to Article 12). The meaning of "other authorities" in Section 26(1)(c) cannot therefore be extended to include what the legislature never intended, that is prevention of employees of Government companies from contesting the elections for being elected as Councillors of Municipal Corporations. Therefore, the subsequent expanded meaning assigned to the expression from the year 1979 onwards, only for the specific purpose of extending the fundamental rights, cannot, therefore, have any relevance to interpret the expression in a provision relating to election. It will be an unintended irony, if the interpretation that was put forth in *Ajay Hasia's* case, *supra*, to preserve and cherish fundamental rights, should now be used by the Executive to strangle and scuttle another equally important right, in democratic process, relating to participation in elections.

14. There is no logic in excluding the employees of public sector undertakings from municipal elections. To illustrate, take the town of KGF, the population of which is virtually made of employees of two public sector undertakings (BEML and BGML) and their families. Similarly, the population of Dooravaninagar in Bangalore, is virtually made up of employees of ITI and their families. There is no reason why they should be prevented from having a say in the local self-Government. The employees of industries are normally a disciplined work force and form the backbone of urban population. They, as a category, are interested in the welfare of the area, where they reside. If they are elected, there will be no conflict between their duties and functions, as Councillors and their duties and functions, as employees of a public sector undertaking. The question of their misusing their position or power to any private benefit does not arise. In fact the said public sector undertakings have no say or influence in the affairs of the Municipal Authority. Therefore, they should not be excluded from participation in

the running of the local authority unless the statute specifically bars or exclude them. Section 26(1)(c) of the Act is not intended to exclude the employees of the Government companies. The section as it stands applies only to employees of statutory corporations controlled by Government.

15. Consequently, there is no legal bar for the employees of BEML and ITI to contest and be elected as Councillors of Municipal Corporations governed by the Karnataka Municipal Corporations Act, 1976.

DECISION OF THE FULL BENCH

(a) The constitutional validity of Section 26(1)(c) of the Karnataka Municipal Corporations Act, 1976 is upheld.

(b) As per the opinion of the majority (Raveendran, J., dissenting), it is held that the petitioners who are holding office in Bharat Earth Movers Limited and Indian Telephone Industries Limited (which are other authorities), are disqualified from contesting elections to Municipal Corporation u/s 26(1)(c) of the Karnataka Municipal Corporations Act, 1976.

(c) As a consequence, these writ petitions are dismissed.

(d) No order as to costs.

N.S. Veerabhadraiah, J.

W.P. Nos. 43146 of 1995 and 28766 and 28842 of 1996

22-1-1999

On the reference made by the learned Single Judge to the Division Bench for adjudication of the constitutional validity of Section 26(1)(c) of the Karnataka Municipal Corporations Act, the Division Bench referred the matter for the Full Bench for adjudication to consider:-

(a) Whether the employees of the respondent-company are eligible to contest the elections to the Municipal Corporation in view of the provisions of Section 26(1)(c) of the KMC Act, 1976? and the

(b) "Other authority" referred to in Article 12 of the Constitution of India is only with reference to exercise of fundamental rights in respect of the matters enumerated in Parts III and IV of the Constitution of India and not for the purpose of Chapter XIV of the Constitution and thereby Section 26(1)(c) of the KMC Act does not disqualify the employees of the Government Company or other public sectors?"

2. When the matter came up before us, we have heard the elaborate arguments at the Bar.

3. My learned senior brother Justice Y. Bhaskar Rao, has in fact touched the depth of the constitutional provisions and considered the scope and object and

also the precedents and norms laid down by the Apex Court and elaborately dealt with the constitutional validity of Section 26(1)(c) of the Karnataka Municipal Corporations Act, 1976 starting from Ajay Hasia's case, supra, and also after considering the qualifications prescribed for the election of President and Vice-President under Article 58 and Article 66 and the provisions of Article 191 of the Constitution of India and clearly observed that Section 26(1)(c) of the Karnataka Municipal Corporations Act is not ultra vires of the Constitution and the companies in which the petitioners are working are companies coming within the meaning of "other authority" and further held that the petitioners were holding the office of profit and accordingly answered the reference in the negative with which I fully concur with the reasonings and findings.

4. My learned Senior brother Justice R.V. Raveendran, formulated two important points for adjudication which reads thus:

"1. Whether Section 21(1)(c) of the Karnataka Municipal Corporations Act is constitutionally valid?

2. Whether Section 26(1)(c) of the KMC Act disqualifies the employees of Government companies and public sector undertakings from being chosen as Councillors of the Municipal Corporation?"

5. Learned brother observed that there cannot be two views that a Government company is "other authority" and therefore "State" within the meaning of Article 12 only for the purpose of Parts III and IV and not for the purpose of Part XIV or any other provisions of the Constitution. He held that there is no legal bar for the employees of the Bharath Earth Movers Limited (BEML) and Indian Telephone Industries (ITI) to contest and be elected as Councillors as the Municipal Corporation is governed by the Karnataka Municipal Corporations Act, 1976, for which I do not subscribe my views for the following reasons:

6. The points that arise for my consideration are:

1. Whether the employees of the Public Sector Undertakings/Government Company like BEML and ITI under the control of the State Government or the Central Government does come within the expression of "other authority" under the definition of Article 12 and thereby such of the employees are disqualified under the provisions of Section 26(1)(c) of the Karnataka Municipal Corporations Act?

2. Whether the persons in the capacity of an employee holding an office of profit under the Government Companies or Public Sectors under the control of State Government or Central Government are eligible to contest the elections for being elected as the members of the Municipal Council etc.

7. That in order to appreciate the first point, it is necessary to examine the relevant provisions under which the service conditions of the employees are governed and also with reference to their employment in relation to Article 12 of the Constitution of India.

Section 26(1)(c) reads as under:

"If he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule to the Constitution of India, or under any local or other authority subject to the control of any of the said Governments other than such offices as are declared by rules made under this Act not to disqualify the holder".

8. The reading of Section 26(1)(c) of the KMC Act makes it clear that an employee holding an office of profit under any local or "other authority" under the control of the Government is disqualified from contesting the Municipal elections. In that view of the matter, the important question of law that arises for consideration is:

"Whether the Public Sector Undertakings come within the meaning of "other authorities" that too under the control of the State or Central Government?"

If it is found that the employees were to hold the office of profit under "other authority", then they are disqualified.

9. It deals with the disqualifications for being chosen as a Councillor. In order to disqualify such persons, firstly he should not hold an office of profit either under the Central Government or under the State. Secondly, he should not hold an office of profit under the local or other authority which are under the control of the Government as are declared by the Act and rules.

10. Now the question is, whether the employees of the BEML and Indian Telephone Industries are holding the office of profit and the Public Sectors do not come within the meaning of other authority. Insofar as, this aspect is concerned, the matter has stood at rest by the Apex Court in D.R. Gurushanthappa's case, supra, and also in Ajay Hasia's case, supra, where the Public Sector comes within the meaning of "other authority" as defined under Article 12 of the Constitution of India.

11. Article 12 of the Constitution of India reads thus:

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

A plain reading of the Article 12 and the expression of the words clearly denotes the word "State" includes "local" or "other authorities". Even in Section 26(1)(c) of the KMC Act, the word used is "local" or "other authorities". The language used by the legislature abundantly makes it clear and used those words intending to express the meaning which it knew had been put up on the same words before and unless there is something to relent that presumption. The Act should be construed even if they were such they might originally have been construed otherwise, and thereby, the expression found in Article 12 and u/s

26(1)(c) of the KMC Act is in *pari materia* with the other. A duty is cast on the Court to interpret the word with the intention of the legislation.

12. In Bindra's "Interpretation of Statutes", Eighth Edition, the passage at page 272 reads thus:

"Words in statutes in *pari materia*: Words defined in a statute may have the same meaning in another statute which is in *pari materia* therewith. What do we mean by the statutes in *pari materia*? Where Acts are so related as to form a system or code of legislation and when they relate to same persons or things or to the same class of persons or things or have the same purpose or object, the statutes are called in *pari materia*. The word "par" must not be confounded with the word *similes*. It is used in opposition to it as in the maxim *magis paria sunt quam similes* e.g., intimating not likeness merely but identity. It would, however, be a mistake to expect identity in the language of the Acts. They may be independent and amendatory in form, they may be complete enactments dealing with a single limited subject-matter or sections of a code or provision or they may be combination of these. It must be remembered that in order to be in *pari materia*, the Acts need not have been enacted simultaneously or that they should refer to one another. However, application of the rule that statutes in *pari materia* should be construed together is most justified in the case of provisions of the Acts relating to the same subject-matter, that were passed at the same or successive sessions of the legislature in the same year. In such cases, the probability that Acts relating to the same subject-matter were actuated by the same policy is very high for the Acts were enacted by the same men at almost the same time. This, of course, is subject to one overriding consideration that, unless the two enactments clearly indicate two different considerations. If the language of the two statutes in all respects is identical, no question of construing one Act with the assistance of the other Act can arise. It is only where one Act is ambiguous or some provision appears to be of doubtful meaning that the assistance is sought from another statute in *pari materia* to remove the doubt or ambiguity. It is only in such circumstances that assistance in ascertaining the meaning of an enactment is permitted under this rule to be obtained by comparing its language with the words given in an earlier statute relating to the same subject. English Income Tax Act is not in *pari materia* with Indian Act. But where different statutes deal with identical subjects at different times or deal with a person or thing for same purpose, they are in *pari materia* and they should be taken and considered together as one system and as explanatory of each other. Where words and expressions in a statute are taken from earlier statutes in *pari materia* which have received judicial construction, it must be assumed that the legislature was aware of such interpretation, and intended it to be followed in later enactment. A Judge, however, is not justified in construing one statutory provision by a decision dealing with interpretation of another statutory provision in the wordings of which are substantially different. It was held in *Desh Raj Gupta v Industrial Tribunal IV, U.P., Lucknow*, that a relevant decision under the Contract Act must be applicable to a case under the U.P. Act,

provided the provisions of the two Acts are in *pari materia*".

Therefore, it is only when an Act is ambiguous or some provision appears to be of some doubtful meaning that the assistance is sought from another statute in "*pari materia*" to remove the doubt or ambiguity. In the case on hand, there is no ambiguity, and as such, in the definition and meaning of Section 26(1)(c) of the KMC Act to give any other interpretation of "other authority" or "local authority". When the words of the statute are clear, it is within the province of the Court simply with a view to avoid apparent anomalies to put such an interpretation on the words as they are incapable of preparing the wordings and expression in Section 26(1)(c) of the KMC Act as is given in Article 12. Therefore, there cannot be any ambiguity at all. It is always the pith and substance of the Act and the intention of the legislature that has to be construed. The words "*ejusdem generis*" defined in page 290 of "*Interpretation of Statutes*" reads thus:

" *Ejusdem generis*-(i) Meaning.--The words "*ejusdem generis*" means of the same kind or nature. The rule of "*ejusdem generis*" is that where particular words are followed by general, the general words should not be construed in their widest sense but should be held as applying to objects, persons or things of the same general nature or class as those specifically enumerated, unless of course, there is a clear manifestation of a contrary purpose. Or to put it in a slightly different language, where general and special words which are capable of analogous meaning are associated together, they take colour from each other and the general words are restrained and limited to a sense analogous to the less general. The *ejusdem generis* doctrine has been described in the words of Lopes L.J., in *Smelting Co. of Australia v Commissioner of Inland Revenue*, as meaning "that where general words immediately follow or are closely associated with specific words, their meaning must be limited by reference to the preceding words". *Ejusdem generis* is not a rule of law, but a rule of construction, which enables a Court to ascertain the intention of the legislature when the intention is not clear and does not warrant the Court, the Court in subverting or defeating the legislative will by confining the operation of a statute within narrower limits than intended by the law makers. It should be resorted to not for the purpose of defeating the intention of the legislature but for the purpose of elucidating its words and giving effect to its intention. It is based on the idea that if the legislature intended its general words to be used in an unrestricted sense so as to embrace the objects, persons or things, covered by the particular words, it would not have taken the trouble of using the particular words at all. Whether the rule of *ejusdem generis* should be applied to a particular provision depends on its terms and the purpose and object the provision is intended to achieve. The fact that this particular rule has been applied to one provision is no indication that it should be applied to another provision even if it recurs in the same enactment. The rule of *ejusdem generis* is not one of universal application. It is merely a rule of construction and as such, it may be of no assistance and the intention of the legislature is so plain as to require no resort to canons of construction. The rule is to be made use of only where the language of the

statute under consideration is somewhat vague or uncertain. It will not be proper to follow the rule where to do so will defeat to impair the plain purpose of the legislature. Nor can it be employed to restrict the operation of an Act within narrower limits than was intended by the law makers. This doctrine, is a variation of the doctrine of *noscitur a sociis*. Where general words follow specific words in an enumeration describing the legal subject the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. It is not uncommon for the legislature to set out a series of special words of a like nature and to close the enumeration with a general term such as "and all other", "any other", "other persons", "or business", "other property", and similar expressions".

Therefore, it is the intention of the legislature and the purpose for enactment and the principles laid down therein have to be applied and not to give any other expression which are not provided.

13. In *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, , at para 1, it has been held as follows:

"It is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes. The definition of an expression in one Act must not be imported into another".

Thus it makes clear that it is the intention and purpose of the Act which has to be given effect to and not to give any other expression.

14. In *V.D. Mahajan's "General Clauses Act, 1897"*, "Local Authority" defined u/s 3(31) reads as follows:

"Local Authority.--According to the definition "Local Authority" means a Municipal Committee, a District Board, a body of Port Commissioners, or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund. It is clear that a Municipality is a "Local Authority", a District Board is a "Local Authority", a body of Port Commissioners is a "Local Authority" and likewise any authority which is given by the Government the power to control or manage a Municipal Fund or a Local Fund is a Local Authority.

The definition of "Local Authority" can be divided into two parts. The first part is specific and mentions certain authorities. The second part is generic and covers any other authority legally entitled to or entrusted by Government with the control and management of a municipal or local fund. In actual practice, it is the second part which is more important and a large number of authorities have been created in the field of local self-Government and other fields. The most important test for deciding whether or not an authority is a local authority or not within the meaning of Section 3(31) of the General Clauses Act is that the authority must be legally entitled to or entrusted by the Government with the control and management of a municipal or local fund".

It is the second part which is applicable to the facts of this case.

15. Similarly, in Mysore General Clauses Act, 1899, Section 3(2) defines what is "Local Authority" which reads thus:

" "Local Authority" shall mean a municipal committee, district board or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund".

It has also the same meaning as connoted or other authority legally entitled to.

16. In the light of the expressions thereon under the General Clauses Act and also taking into consideration the intention of the legislature in incorporating the Section 26(1)(c) of the KMC Act, the explanation of the meaning of "other authority" cannot be construed as against the intention of the legislature and thereby the expression "other authority" will include all constitutional or statutory authorities on whom the powers are conferred by the enactment of the law.

17. What emerges from the judgment of the Supreme Court in *Ajay Hasia's* case, *supra*, is that Article 12 of the Constitution includes "other authorities" also.

18. In Section 26(1)(c) of the KMC Act, the word used is "any local or other authority".

19. In S.N. Bindra's "Interpretation of Statutes", the word "or" is used with the following expression:

"When the word "or" is used in relation to two or more alternatives it is not necessarily the case that the alternatives are mutually exclusive. The question as to whether they are mutually exclusive or not must be determined by applying the general rule and words should be construed to ascertain the intention of the provision in question to be collected from the whole of its terms".

20. Therefore, wherever the word "local authority" is used, the same meaning has to be conveyed in respect of "other authority" in view of the fact, the other authorities have also been constituted under the enactment of the Parliament and the Legislature.

21. In Maxwell's "Interpretation of Statutes", at page 232, the words "and" and "or" are expressed as follows:

"In ordinary usage, "and" is conjunctive and "or" disjunctive. But to carry out the intention of the legislature, it may be necessary to read "and" in place of the conjunction "or", and vice versa."

Therefore, ultimately it is the intention of the legislature that has to be given effect to under which the petitioners have been qualified according to the interpretation of Section 26(1)(c) of the KMC Act.

22. In P. Ramanatha Aiyar's, *The Law Lexicon*, the Encyclopaedic Law

Dictionary, 1997 Edition at page 1141, the word "Local Authority" is defined as follows:

"Local Authority" means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area.

In the same book at page 1381, the expression "other authority" is defined which reads as follows:

"The expression "other authorities" includes all public authorities, that is, authorities created by a statute endorsed with powers and functions in a given field of activity and for the control thereof, and having the power to make their own rules and regulations, having the force of law".

23. In the case on hand, the Public Sector is constituted under an enactment of the Parliament empowering it to frame its own rules and regulations controlling the service conditions like appointment, removal, dismissal, suspension etc., and at the same time providing for payment of the salary, increment, bonus etc., under the Industrial Law. In that view of the matter, the definition of Article 12 cannot be restricted to Chapters III and IV of the Constitution of India.

24. It is not in dispute that BEML as well as ITI are constituted under the Companies Act, 1956. Section 617 of the Companies Act reads thus:

"Definition of "Government Company".--For the purposes of this Act, Government Company means any company in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a Company which is a subsidiary of a Government Company as thus defined".

It is clear from the reading of Section 617, that if the share capital is more than 50% by the Central or State Government, it is deemed to be a Government Company.

Section 637 of the Companies Act reads thus:

"637(1) The Central Government may, by notification in the Official Gazette and subject to such conditions, restrictions and limitations as may be specified therein, delegate any of its powers or functions under this Act (other than the power to appoint a person as public trustee u/s 153-A and the power to make rules) to such authority or officer as may be specified in the notification".

25. Section 637 enables the companies to make rules in view of the delegation of the powers.

Section 637-A of the Companies Act reads thus:

"637-A. (1) Where the (Central Government or Company Law Board) is required or authorised by any provision of this Act.-

(a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter;

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter;

then in the absence of anything to the contrary contained in such or any other provision of this Act the (Central Government or Company Law Board) may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save or otherwise expressly provided in this Act, every application which may be or is required to be made to the (Central Government or Company Law Board) under any provision of this Act.-

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government (or Board) to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government (or Board) in relation to any matter; or

(c) in respect of any other matter, shall be accompanied by such fee, as may be prescribed:

Provided that different fees may be prescribed for application in respect of different matters or in case of applications by companies, for applications by different classes of companies".

Section 637-A enables the Central Government to accord approval in respect of the matters provided.

Section 642 of the Companies Act reads thus:

"642. (1) In addition to the powers conferred by Section 641, the Central Government may, by notification in the Official Gazette, make rules.-

(a) for all or any of the matters which by this Act are to be, or may be, prescribed by the Central Government;

(b) generally to carry out the purposes of this Act.

(2) any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five hundred rupees and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which such contravention continues.

(3) Every rule made by the Central Government under sub-section (1) shall be

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

26. It is further clear from the reading of Section 642 that the Central Government has been empowered to make such rules and carry out the purposes of the Act. Under the Companies Act itself, it has empowered the companies to frame such rules which are deemed fit in the circumstances for the purpose of regulating the business of the Company. Thereby, it is clear that the companies also exercise its sovereign powers to make rules as contemplated by the Act. It is under the Companies Act, the Articles of Association were framed and the said fact is also not in dispute. Under the Articles of Association itself, it is provided to make the bye-laws. Article 120, Clause 22 reads as under:

"to make bye-laws and vary and repeal them from time to time for the regulation of the business of the company, its officer and servants".

A plain reading of the Articles of Association makes clear that in respect of the servants of the company to regulate their service conditions, the company is empowered to frame such rules. Therefore, it is clear that by virtue of the provisions of the Companies Act read with the Articles of Association constituted, even the services of the workmen are controlled by the company. It further makes clear within the ambit of the company, the rules framed thereunder, the companies are exercising their sovereign powers so as to control its employees in a particular manner. Therefore, there is no ambiguity in the language and therefore, cannot be said that the companies cannot exercise any sovereign powers in respect of their employees or workmen.

27. The, important question that has to be examined is whether by virtue of the enactments of the Central and State Governments, the Public Sectors are functioning under the control and authority of the Government, in order to consider whether the employees of BEML and ITI are holding the office of profit or not.

Article 245 of the Constitution of India reads as under:

"245. Extent of laws made by Parliament and by the Legislatures of States.--(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that

it would have extra-territorial operation".

It specifically provides for enactment of laws by the Parliament.

Similarly, Article 246 of the Constitution of India reads as under:

"246. Subject-matter of laws made by Parliament and by the Legislatures of States.--(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have powers to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List".

28. By a reading of sub-sections (1) to (4) of Article 246, it is manifest that in respect of matters enumerated in Lists I, II and III, it is provided for enactment of law either by the Parliament or by the State Legislature as the case may be.

29. It is by virtue of the powers conferred under Articles 245 and 246 of the Constitution, all the laws and enactments are made by the Parliament as well as by the State Legislature under which the Public Sector Undertakings also is included for the purpose of control and exercise of sovereign powers. It is also to be noted that by virtue of the powers conferred under the enactment, even the Company Law was also enacted wherein it has also provided to make the rules.

30. In the Indian Penal Code, the words "Public Servant" has been defined u/s 21, which reads:

"Every person.-- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956".

The definition makes it clear that even a person working in any of the local authority or in a Government Company is deemed to be a public servant.

31. Similarly in "The Karnataka Lokayukta Act, 1984", Section 2(6) defines

"Government Servant" as follows.-

"Government Servant" means a person who is a member of the Civil Services of the State of Karnataka or who holds a civil post or is serving in connection with the affairs of the State of Karnataka and includes any such person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority or any person whether incorporated or not, and also any person in the service of the Central or another State Government or a local or other authority whose services are temporarily placed at the disposal of the Government of Karnataka.

Section 2(12) defines "Public Servant". The relevant sub-sections read thus:

"Public Servant" means a person who is or was at any time.-

(g) a person in the service of pay of.--

(i) a local authority in the State of Karnataka;

(ii) a statutory body or a corporation (not being a local authority) established by or under a State or Central Act, owned or controlled by the State Government and any other Board or Corporation as the State Government, having regard to its financial interest therein by notification, from time to time specify;

(iii) a company registered under the Companies Act, 1956, in which not less than fifty-one per cent of the paid up share capital is held by the State Government, or/and company which is a subsidiary of such company;

(iv) a society registered or deemed to have been registered under the Karnataka Societies Registration Act, 1960, which is subject to the control of the State Government and which is notified in this behalf in the Official Gazette.

Thus from the reading of the above definition it makes clear that even a person working in a Government company comes within the meaning of a public servant holding an office of profit.

32. It is not in dispute that the authorities, i.e., BEML and ITI have power to recruit the employees to its establishments and the authority is also competent to take disciplinary action and remove or dismiss such an employee. In that view of the matter, the petitioners being holding the office of profit and working in the authority fully controlled by the Government. It is rather difficult to hold that they are entitled to contest and be elected as Councillors for the Municipal Corporation. It has to be noted that there cannot be one rule for the ruler and another for the rule. In that view of the matter, I am inclined to hold that the petitioners are holding the office of profit under "other authority" and thereby, they are disqualified to contest for being chosen as long as the company does not lose the characteristics of the Government company.