

(1988) 01 GUJ CK 0007
In the Gujarat High Court
Case No : L.P.A. No. 461 of 1987

Modern Food Industries (India) Ltd.

APPELLANT

Vs

M.D. Juvekar

RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 106(1), 106(2), 106(2), 124, 14
Contract Act, 1872 — Section 23, 24
Service Discipline and Appeal Rules, 1979 — Rule 9
States Reorganisation Act, 1956 — Section 116, 87, 88
Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978 — Rule 31

Citation : (1988) 1 GLR 481 : (1988) 2 LLJ 534

Hon'ble Judges : D.H. Shukla, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

Ahmadi, J.—The first appellant, Modern Food Industries (India) Ltd., also known as Modern Bakeries (India) Ltd., a Government Company registered under the Companies Act, 1956 having its registered office at New Delhi and Units spread all over the country including Ahmedabad, has filed this appeal against the order of R. C. Mankad, J. dated October 8, 1987 in Special Civil Application No. 1326 of 1980 (reported in M.D. Juvekar Vs. Modern Bakeries (India) Ltd. and Others, whereby he set aside the order terminating the services of the respondent and directed his reinstatement in service with effect from April 21, 1980 the date of termination of his service, with full back wages and continuity in service. Appellant No. 2 is the Chairman-cum-Managing Director of appellant No. 1. Appellant No. 3 is the General Manager of appellant No. 1 of the Ahmedabad Unit situate at Naroda Industrial Estate, Ahmedabad.

2. The appellants have raised three contentions in this appeal. They are :

(1) Whether the Modern Food Industries (India) Ltd., a Government Company incorporated under the Companies Act, falls within the definition of "the State"

under Art. 12 of the Constitution of India ?

(2) Whether clause 2.18 of the Staff Regulations is illegal and void on the ground to being unconscionable and opposed to public policy, i.e. contrary to Section 23 of the Contract Act as also violative of Arts. 14 and 16 of the Constitution of India ?

(3) Whether this High Court was competent to entertain the petition brought by the respondent-employee who was posted at the date of the termination of his service at the Calcutta Unit of the appellant No. 1 Company merely because communication of the termination order was received by him at Ahmedabad while on leave ?

3. The learned single Judge has come to the conclusion that the appellant No. 1 Company was "the State" within the meaning of Art. 12 of the Constitution; that Regulation 2.18 of the Staff Regulations was illegal and void as violative of Section 23 of the Contract Act and ultra vires Arts. 14 and 16(1) of the Constitution and that this High Court had jurisdiction to entertain the petition as the consequence of the termination order fell on the respondent at Ahmedabad where he was served with the impugned order. The appellants, being aggrieved by these findings recorded by the learned single Judge, have preferred this appeal.

4. The respondent, who holds the degree of Bachelor of Arts (Poona University) and Diploma in Marketing and Advertising, entered service of the first appellant-Company as Sales Assistant on October 23, 1967. The appointment letter carried the following conditions on which the appellants have placed reliance :

"The appointment is terminable by one month's notice on either side without assigning any reasons. The appointing authority, however, reserves the right to terminate the service forthwith or before the expiration of the stipulated period of the notice by making payment of a sum equivalent to pay and allowance for the period of notice or the unexpired portion thereof."

In course of time the respondent came to be promoted as Sales Manager and was posted at Kanpur in about April 1973 and later came to be confirmed on successful completion of the probation period. In 1975 he came to be transferred to Ahmedabad. It was the respondent's case that when he was transferred to Ahmedabad, the sales position of the Ahmedabad Unit was bleak and due to his untiring efforts the position had materially improved. However, in 1977-78 he received several complaints from customers and merchants regarding the quality of the bread manufactured by the appellant Company. He drew the attention of the concerned authorities to these complaints and wrote several letters to the General Manager of the Ahmedabad Unit in the behalf but to no avail. On the contrary, as a result of the complaints, he incurred the wrath of the Chairman-cum-Managing Director, appellant No. 2, resulting in unwarranted harassment. It was his contention that attempts were made to harm his prospects by making adverse entries in his confidential record. According to him, the second appellant

was keen on getting rid of him and during his visit to Ahmedabad on November 20/21, 1978 he went to the length of asking the respondent to tender his resignation. This fact was placed on record on November 27, 1978 and was followed up by a written complaint addressed to the General Manager, appellant No. 3, dated February 3, 1979, a copy whereof was forwarded to appellant No. 2 also for information. The respondent was thereafter transferred to Calcutta by an order dated April 6, 1979. Although this order, in the view of the respondent, was mala fide, the respondent took charge of his post at Calcutta. Since the harassment continued unabated, the respondent contends that he proceeded on leave and came to Ahmedabad. While he was on leave at Ahmedabad, he received the impugned order of termination of service dated April 21, 1980. The text of the order may be reproduced at this stage :

"April 21, 1980

MEMORANDUM

Sub :- Termination of Services.

The services of Shri M. D. Juvekar, Additional Sales Manager (on leave), Calcutta Unit, are terminated under provisions of Staff Regulation No. 2.18 of the Staff Regulations of the Company with immediate effect. Shri Juvekar may collect his 90 day's pay in lieu of notice period, as provided under the said staff Regulation from the General Manager, Ahmedabad Unit. Sd/- (R. S. PAL) Chairman-cum-Managing Director"

The foot-note at the end of this Memorandum is of considerable importance so far as the question of jurisdiction is concerned and it would therefore be appropriate to reproduce the same. It runs as under :

"For his convenience only, it was decided that Ahmedabad Unit will make the payment of 90 days notice pay to Shri Juvekar. He may, therefore, collect the same from G. M. Ahmedabad Unit immediately."

Since the impugned order of termination is under Regulation 2.18 of the Staff Regulations of the Company, it would be advantageous to read the same at this stage. The said Regulation reads as under :

"2.18 Termination of Service.

(i) The services of any confirmed employee may be terminated by the competent authority on giving him :

(a) 90 days" notice or pay in lieu thereof in the case of an employee belonging to Cat. I or II.

(b) 60 days" notice or pay in lieu thereof in the case of employees belonging to Cat. III.

(ii) The authority competent to appoint shall be the competent authority for the purpose of this regulation."

On the respondent receiving the impugned communication dated April 21, 1980 terminating his services under Regulation 2.18 of the Staff Regulation, he approached this Court by a writ petition under Art. 226 of Constitution of India challenging the order of termination on diverse grounds. The learned single Judge by his judgment and order dated October 8, 1987 upheld the challenge, set aside the order of termination and directed his reinstatement in service with full back wages, It is against the said order that the present appeal is preferred.

5. On behalf of the appellants Col. J. M. Mohan, General Manager of Ahmedabad Unit and Shri R. S. Pal, Chairman-cum-Managing Director of appellant No. 1 Company, filed affidavits-in-reply denying the various averments attributing motives for the passing of the termination order and contended that the Company was entitled to terminate the services of the respondent by virtue of Regulation 2.18 of the Staff Regulations framed by the Company. It was further contended that the writ jurisdiction of this Court could not be invoked firstly because no part of the cause of action had arisen within the State of Gujarat and, secondly, because the appellant No. 1 Company was not "the State" within the meaning of Art. 12 of Constitution. It is also alleged that the service of the respondent had to be terminated not because the appellants were biased against him but because his overall performance was not found to be up to the mark and also because he was guilty of insubordination. It is not necessary for us to capitulate the averments made in this behalf against the respondent as the question which arise for our determination in this appeal do not require us to go into these factual aspects. Suffice it to say that the allegations made against the respondent in the counters have been denied by the respondent in his affidavit-in-rejoinder. It is in the back-drop of the above facts that we must consider whether the impugned order passed by the learned single Judge is sustainable.

6. Article 12 which finds its place in Part III of the Constitution entitled "Fundamental Rights" defines the expression "the State" to include the Government and Parliament of India and the Government and the Legislature of each the States and all local or other authorities within the territory of India or under the control of the Government of India. Article 36 which finds place in Part IV of the Constitution entitled "Directive Principles of State Policy", posits that the expression "the State" shall have the same meaning as in Part III of the Constitution. Thus, the expression "the State" used in Parts III and IV of the Constitution includes not only the Government of India, Parliament of India, the Government of each State, the Legislature of each State and all local authorities but also "other authorities within the territory of India or under the control of the Government of India". By virtue of Art 73, the executive power of the Union extends to the matters with respect to which Parliament has power to make laws except in regard to matters in respect of which the Legislature of the State has also power to make laws unless expressly provided by the Constitution or in any law made by Parliament. Similarly, by virtue of Art. 162 the executive power of a State extends to matters with respect to which its Legislature has power to make laws provided that in any matter with respect to which the Legislature of a State

and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this constitution or by any law made by Parliament upon the Union or authorities thereof. Article 298 next provides that the power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. This Article expands the executive power of the Union and of each of the States to carry on any trade or business. In a modern society the State is called upon to engage itself in trade and business activities which it had considered essential for the promotion of social and economic welfare of the community and is no more confined to its traditional role. Of course such expanded activities in the field of trade and business must conform to the requirements of the Constitution, particularly Part III thereof. Any violation of the fundamental rights guaranteed by the Constitution by the State while operating in the field of trade or business would also be liable to be struck down as unconstitutional. The power conferred by Art. 298 of the Constitution must, therefore, be so exercised as to be consistent with the requirements of the Constitution and should be directed towards furtherance of the principles laid down in Part IV of the Constitution. The State being an abstract entity can only operate through its agencies constituted under Statutes such as statutory corporations, etc. In this context we have to consider whether the appellant No. 1 Company which is a Government Company incorporated under the Companies Act is one such agency or instrumentality through which the Government is discharging its obligation under Art. 47, which enjoins upon the State the duty to raise the level of nutrition and improve the public health of its people, while operating in the field of trade and business by running a bakery intended to supply nutritious bread to the community.

7. It is obvious from the cause title of the memo of appeal that appellant No. 1 is a Government Company having its registered office at New Delhi. Section 617 of the Companies Act defines "Government Company" as 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 of Governments, or party by the Central Government and party by one or more State Government and includes a Company which is a subsidiary of a Government Company as thus defined. Appellant No. 1 Company has an authorised share capital of Rs. 4.13 crores divided into 41,300 equity shares of Rs. 1,000/- each. The respondent avers that the Food Corporation of India, Delhi Administration, Gujarat, Kerala, Maharashtra, Tamilnadu and West Bengal respectively hold one share each whereas the remaining shares are held by the Government of India, State Government and other statutory Corporations controlled by the Government of India. There are no private shareholder of the Company. Thus, according to the respondent more than 99% of the shares are held by the Government of India, the State Government and statutory Corporations controlled by the Government of India, It is further averred that the Directors of the Company are nominated by the Central Government, complete financial control lies with the Central

Government and all decisions of the Company are controlled by the Central Government. These averments have remained uncontroverted. The Memorandum and Articles of Association of the Company are subscribed by the President of India and by R. Balasubramanian, Joint Secretary to the Government of India, Ministry of Food & Agriculture (Department of Food), New Delhi. Clause (b) of Art. 3 lays down that any invitation to the public to subscribe for any shares in or debentures of the Company is prohibited. Article 6 provides is that subject to the provisions of the Act and the Articles and to the rights of the President, the shares shall be under the control of the Directors who may allot or otherwise dispose of the same on such terms and conditions as they may think fit. Article 7 provides that any increase in the capital of the Company shall be subject to the approval of the President. Article 9 lays down that approval of the President is necessary for reduction of capital and Art. 10 provides for the approval of the President for the sub-division and consolidation of shares of the Company. These Articles, therefore, show that public subscription to the shares in or debentures of the Company is totally prohibited and the President exercise control over the increase or reduction in share capital of the Company, even as regards the subdivision or consolidation of shares. By virtue of Art. 62 the issue of debentures is also made subject to the approval of the President. The President is given a right by Art 72 to appoint any person as his representative at all or any of the meetings of the Company. The person so appointed is to be deemed to be a member of the Company with all the rights and powers including the right to vote by proxy. The power to appoint Directors is conferred on the President by Art. 96 which inter alia provides that the President shall have the power to remove any Director from office at any time in his absolute discretion and fill the vacancy by fresh appointment. Article 106(1) empowers the President to appoint Chairman of the Board of Directors or Managing Director or Managing Directors of the Company. The first Chairman of the Board of Directors was the Secretary to the Government of India, Ministry of Food and Agriculture (Department of Food), Art. 106(2) empowers the President to entrust to and confer upon the Chairman, Managing Director(s) and General Manager such powers as are exercisable by the Directors subject to such terms and conditions as he may think appropriate to impose. The powers of the Directors are enumerated in Art. 119 of the Memorandum and Articles of Association of the Company. It is obvious from the above Articles that the appointment and removal of the Directors of the Company is with the President, so also the President is empowered to appoint the Chairman of the Board of Director as well as Managing Directors of the Company. The President can confer upon the Chairman, Managing Directors and General Managers such powers as he may consider appropriate as are exercisable by the Director of the Company. Thus, the control of the Company is clearly with the President who has the right to appoint or remove the Directors, the Chairman of the Board of Directors and Managing Directors of the Company.

8. Under Art. 124 approval of the President is necessary for the declaration of dividends. Under Art. 61, payment or repayment of money borrowed can be

secret only with the approval of the President. The mode of audition of accounts is provided by Art. 143. The Comptroller and Auditor General of India has been empowered to direct the manner in which the Company's accounts shall be audited by the Auditor/Auditors and to give such Auditor/Auditors instruction in regard to any matter relating to the performance of his/their functions as such and to conduct supplementary or test audit of the company's accounts by such person or persons as he may authorize in that behalf. Needless to say that for the purpose of such audit such person or persons as may be authorised by the Comptroller and Auditor General of India shall have access to all accounts, account books, vouchers, document and other paper of the Company and would be entitled to such information as may be required. The Comptroller and Auditor General of India is given a right to comment upon or supplement to the audit report submitted by the Auditor/Auditors and submit his report in such manner as he may consider fit. Any comment made by the Comptroller and Auditor General of India has to be placed before the Annual General Meeting of the Company along with the audit report. Article 158 empowers the President to issue such directions or instructions as he may consider necessary in regard to the affairs or conduct of the business of the Company or Directors thereof. The Directors are bound to give immediate effect to such directions or instructions issued by the President. It is clear from the above Articles that the President exercises considerable control so far as financial management is concerned. It is in the back-drop of these provisions found in the Memorandum and Articles of Association of the Company that we must consider whether the appellant No. 1 Company can be said to be "the State" within the meaning of Art. 12 of the Constitution.

9. We have already pointed out earlier that the executive power of the Union and of each State extends to the carrying on of any trade or business through its agencies or instrumentalities created under a statute or incorporated under the Companies Act. In a developing country, the State is required to extend its activities to fields hitherto reserved for private enterprise to meet the new social demands for the promotion of the social and economic welfare of the community. These new tasks undertaken by the State have to be fulfilled through the instrumentality of statutory Corporations and Companies incorporated under the Companies Act. Of course these tasks have to be performed consistently with the provisions of the Constitution. We have noticed from the Memorandum and Articles of Association of the Company the extent of control exercised by the President in the matter of the distribution of share capital, issuance of debentures, declaration of dividends appointment of Directors, Chairman of the Board of Directors and Managing Directors, exercise of power by the Directors and Managing Directors as per instructions issued from time to time and the supervision over the finances of the Company, etc. There can, therefore, be no doubt that appellant No. 1 Company, 99% of the share capital whereof is held by the Government of India, the State Government and institutions controlled by the Government of India, is essentially a Government Company floated with the

intention of discharging the duties cast by Art. 47 of the Constitution of India by providing nutritious bread at reasonable price to the community. We are, therefore, of the opinion that the appellant No. 1 Company is "an authority" within the territory of India and under the control of the Government of India and can therefore, be said to be "the State" within the meaning of Art. 12 of the Constitution of India.

10. We will now refer to the case law in this behalf. In *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, , it was held per majority that the Electricity Board of Rajasthan constituted under the Electricity (Supply) Act, 1948 came within the definition of "the State" in Art. 12 of the Constitution it was "other authority" within the meaning of the said Article. The Supreme Court negated the argument that in interpreting the expression "other authority" the principle of *ejusdem generis* should apply. It held that the expression "other authority" was wide enough to include every authority created by a statute on which powers are conferred to carry out Government or quasi-Governmental functions within the territory of India or under the control of the Government of India. The fact that some powers conferred related to the carrying on of commercial activities could not take it out from the meaning of "the State" in Art. 12 since such powers were specifically conferred by Art. 19(1)(g) and 298 of the Constitution. 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*, , three statutory Corporations, namely, Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation were, held to fall within the meaning of "the State" as defined in Art. 12 of the Constitution. In that case two questions arose for determination, namely, whether the three statutory Corporations fell within the definition of "the State" in Art. 12 of the Constitution and whether the regulations framed by such Corporations have force of law. Both these question and whether the regulations the affirmative by the majority holding that these three Corporations were "other authority" situate in the territory of India and were under the control of the Government of India and, therefore, they answered the requirements of the definition of "the State" in Art. 12 of the Constitution. It was further held that the regulations framed by these statutory Corporations in exercise of power conferred on them by the statute have the force of law. Ray, C.J. pointed out at P. 411 that "The State" undertakes commercial functions in combination with Government function in a welfare state" while Mathew, J. held at P. 423 that "A finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as State action". Mathew J. further pointed out at P. 424 that "the State today had an affirmative duty of seeing that all essentials of life are made available to all persons. The task of the State today is to make possible the achievement of a good life both by removing obstacles in the path of such achievements and in assisting individual in reaching his ideal of self-perfection". It is, therefore,

obvious that when certain activities are undertaken through Corporations which are instrumentalities or agencies of the State, such Corporations fall within the definition of "the State" in Art. 12 of the Constitution. Again in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Court observed that the International Airport Authority constituted under the International Airports Authority Act, 1971 came within meaning of the expression "the State" in Art. 12 of the Constitution. In the case it was pointed out that a Corporation may either be established by a statute or incorporated under the Companies Act or the Societies Registration Act, 1860. If it is wholly controlled by Government, not only in its policy making but also in carrying out the function entrusted to it, there can be no doubt that it would be an instrumentality or agency of the Government. In such a case the instrumentality or agency would come within the definition of "the State" in Article 12. In *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, , the Court held that the Warehousing Corporation created under statute was discharging the functions of the State. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, the Regional Engineering College which was established, administered and managed by a society registered under the Jammu and Kashmir Registration of Societies Act, 1898 was held to be "the State within the meaning of Art. 12 of the Constitution. In that case it was noted that although the body had a distinct juristic entity and carried out its functions on business principles with a certain amount of autonomy, in reality it was the Government which was acting through its instrumentality or agency and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot obliterate the true nature of realities. In that case, after referring to various decisions the Court summarised the relevant tests at pages 112-113 as under :

"(1) One thing is clear that if the entire share capital of the Corporations is held by Government it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government.

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

(3) It may also be a relevant factor whether the Corporation enjoys monopoly status which is the State conferred or State protected.

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

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

(6) Specifically, if a department of Government is transferred to a Corporation, it would be a strong factor supportive of the inference of the Corporation being an

instrumentality or agency of the Government."

Thereafter in *Som Prakash Rekhi v. Union of India* the Court held that Bharat Petroleum, a Government Company incorporated u/s 617 of the Companies Act fell within the meaning of the expression "the State" used in Art. 12. In *B. S. Minhas v. Statistical Institute* (1984 I LLJ 671) , following the criteria laid down in *Ajay Hasia's* case (supra), the Supreme Court held that the Indian Statistical Institute, a society registered under the Societies Act, 1860 and wholly financed by the Union of India, was an "authority" within the meaning of Art. 12. Once again following the decision in *Ajay Hasia's* case (supra) the Supreme Court held that the Indian Council of Agricultural Research which was a society registered under the Societies Registration Act was an instrumentality of the State falling within the expression "other authority" within the meaning of Art. 12 (see : *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, . In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, " the said Corporation was held to be an instrumentality of the Central Government and hence falling within Art. 12. Similarly in *Workmen of Hindustan Steel Ltd. and Another Vs. Hindustan Steel Ltd. and Others*, the Court held that the Company was a public sector undertaking and, therefore, "other authority" under Art. 12. In *Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others*, the Supreme Court held that an aided school which received a Government grant of ninety-five per cent. was an "authority" within the meaning of Art. 12. In *West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others*, , the Electricity Board was held to be an instrumentality of the State covered by the expression "other authority" used by Art. 12. Lastly in a recent decision in the case of *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , the Supreme Court, after undertaking a review of all the earlier decisions, came to conclusion that the Corporation was a Government undertaking in the public sector and was, therefore, "other authority" within the meaning of Art. 12 of the Constitution.

11. Strong reliance was however placed by Mr. Bhatt on the decision in the case of *Sabhajit Tewary Vs. Union of India (UOI) and Others*, in support of the contention that the first appellant cannot be termed "the State" under Art. 12. In that case the Council of Scientific and Industrial Research, a society registered under the Societies Registration Act, was held not to be an authority within the meaning of Art. 12 on the ground that it did not have any statutory character and the mere fact that the Prime Minister was the President or that the Government appointed nominees to the governing body or that the Government had the power to terminate the membership did not establish anything more than the fact that the Government took special interest and care for the promotion, guidance and co-operation of the scientific and industrial research and allied activities. This decision was considered by the Supreme Court in the *Airport Authority's* case (supra) in the following words *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, :

"Lastly, we must refer to the decision in *Sabhajit Tewary Vs. Union of India (UOI) and Others*, where the question was whether the Council of Scientific and Industrial Research was an "Authority" within the meaning of Art. 12. The Court no doubt took the view on the basis of the facts relevant to the constitution and functioning of the Council that it was not an "authority" but we do not find any discussion in this case as to what are the features which must be present before a Corporation can be regarded as an "authority" within the meaning of Art. 12. This discussion does not lay down any principle or test for the purpose of determining when a Corporation can be said to be an "authority". If at all any test can be gleaned from the decision, it is whether the Corporation is "really an agency of the Government. The Court seemed to hold on the facts that the Council was not an agency of the Government and was, therefore, not an "authority."

In view of the above observations of the Supreme Court, we are of the opinion that the said decision is not an authority for the proposition canvassed by Mr. Bhatt as it turns on the facts of that case and does not lay down any principle or test for the purpose of deciding the application of Art. 12.

12. The appellant No. 1 Company, being a Government Company u/s 617 of the Companies Act and having been incorporated under the said statute, is engaged in the manufacture of cheap and nutritious bread for consumption by the community. Ninety-nine per cent. of its share holding is with the Central Government, State Governments and statutory Corporations controlled by the Central Government. There is a total prohibition to the members of the public subscribing for shares or debentures of the Company. Therefore, practically the entire share capital of the Company is held by the Government and that is a factor which goes a long way towards indicating that the Company is an instrumentality or agency of the Government, more so when we read it in the context of the directive principle contained in Art. 12 of the Constitution. The Company discharges the obligation cast on the State to raise the level of nutrition of the people and contribute towards improvement of public health. The financial control is of the Government and the accounts are to be audited under the supervision of the Comptroller and Auditor General of India. Increase or reduction in share capital is subject to approval by the President. The payment or repayment of money borrowed is also subject to approval by the President. Without approval of the President, the Company is not entitled to issue debentures. All these provisions found in the Memorandum and Articles of Association go to show the extent of financial control exercised by the Government of India. Similarly, the Government exercises considerable control over the management of the Company through the Directors/Managing Directors to be appointed by the President. The Chairman of the Board of Directors is also appointed by the President. Article 72 empowers the President to appoint any person as his representative at all or any meetings of the Company and the person so appointed is deemed to be a member of the Company with all the rights and powers including right to vote by proxy. A capital expenditure

exceeding Rupees two crores must receive the approval of the President. The declaration of dividend to share holders, the grant of bonus or any other ex gratia payment to the members of the staff etc. are also made subject to the approval of the President. It will thus be seen from the above provisions that considerable control is exercised by the Government in the matter of management of the Company and that is yet another indication that the Company is the instrumentality or agency of the Government. The provisions in the Memorandum and Articles of Association when read in conjunction show existence of deep and pervasive control of the Central Government over the Company. We are, therefore, of the opinion that the learned single Judge was right in reaching the conclusion that appellant No. 1 Company was an instrumentality or agency of the Central Government and, therefore, "other authority" within the meaning of Art. 12 and hence "the State". We must, therefore, answer the first question in the affirmative.

13. We now move on to the second question which bears on the validity of Clause 2.18 of the Staff Regulations. We have reproduced the relevant clause in the earlier part of this judgment. According to the said clause, the services of a confirmed employee like the respondent herein can be terminated by the competent authority on giving him 90 days" or 60 days" notice depending upon the category to which he belongs or pay in lieu of the notice. The validity of this rule is challenged on the twin grounds, namely, (i) that it is inconsistent with Section 23 of the Contract Act and, (ii) violative of Art. 14 and 16 of the Constitution. So far as the challenge based on Section 23, Contract Act, is concerned, it is alleged that Clause 2.18 of the Staff Regulations is unconscionable in as much as it lacks mutuality and confers an unguided and arbitrary power on the management to terminate the services of a permanent employee without giving any reason whatsoever. Section 23 of the Contract Act states that the consideration or object of an agreement is lawful unless, inter alia, the Court regards it as immoral or opposed to public policy. The Section further provides that every agreement of which the object or consideration is unlawful is void. u/s 24 if any part of a single consideration for one or more objects, or any one of several considerations for a single object is unlawful, the agreement is void. However it is well-settled that if the illegal part can be severed from the legal part, the entire contract will not collapse but the illegal part will be removed and the rest of the contract enforced. Fortunately for us it is not necessary to examine the various provisions of the Contract Act in detail since in our opinion the point stands concluded by the decision of the Supreme Court in Central Inland Water Transport Corporation Ltd. (supra) wherein a similar provision, Rule 9 of the Service Discipline and Appeal Rules, 1979 was involved. Rule 9 with which the Supreme Court was concerned read as under :

"9. Termination of employment for acts other than misdemeanour.

(i) The employment of a permanent employee shall be subject to termination on three months" notice on either side. The notice shall be in writing on either side.

The Company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice.

(ii) The services of permanent employee can be terminated on the grounds of "services no longer required in the interest of the Company" without assigning any reason. A permanent employee whose services are terminated under this clause shall be paid 15 days' basic pay and dearness allowance for each completed year of continuous service in the Company as compensation. In addition he will be entitled to encashment of leave at his credit".

Dealing with this clause, the Supreme Court, after considering the case law in this country and the statutes of the United States and United Kingdom, came to the conclusion that if a clause in a contract smacks of unreasonableness or lack of fairness emanating from inequality of bargaining power between the parties, Courts of Law will regard it as opposed to public policy and refuse to enforce the same. The Supreme Court also observed that such a clause in the contract conferring arbitrary and unguided power to the management to terminate the services of even confirmed employees on payment of notice pay must be regarded as violative of Art. 14 of the Constitution. In paragraph 92 of its judgment, the Supreme Court observed as under *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, :

"This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between the parties who are not equal in bargaining power."

If a contract or a clause in a contract is the result of the weaker bargaining power of the employee who, being jobless, has no option but to accept the terms on which the job is offered, such a contract or clause in the contract can only be regarded as unreasonable, unconscionable, unfair and lacking in mutuality and, therefore, opposed to public policy within the meaning of Section 23 of the Contract Act. Dealing with Rule 9(i), the Supreme Court concluded in paragraph 103 as under *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, :

"Rule 9(i) is a term of the contract between the Corporation and all its officers. It affects a large number of persons and it squarely falls within the principle formulated by us above. Several statutory authorities have a clause similar to Rule 9(i) in their contracts of employment. As appears from the decided cases, the West Bengal State Electricity Board and Air India International have it. Several Government Companies apart from the Corporation (which is the first appellant before us) must be having it. There are 970 Government Companies with paid-up capital of Rs. 16,414.9 crores as stated in the written arguments submitted on behalf of the Union of India. The Government and its agencies and instrumentalities constitute the largest employer in the country. A clause such as

Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good. Such a clause, therefore, is opposed to public policy and being opposed to public policy, it is void u/s 23 of the Indian Contract Act."

The appellant No. 1 Company before us is a Government Company having units all over the country including Ahmedabad. Clause 2.18 of the Staff Regulations forms part of the contract of employment by which every employee belonging to categories I, II and III stands governed. Every employee who joins the Company is expected to abide by this clause, no matter whether or not his pointed attention thereto is drawn at the time of his employment. The employee has no choice but to accept the said term if he desires employment with the Company. The employees have no voice in the formulation of this clause and unlike Rule 9(i) with which the Supreme Court was concerned, this clause does not permit the employee to put an end to the contract of employment by a similar notice or on payment of a sum equivalent to pay for the notice period. It can, therefore, be said that the clause in the contract lacks mutuality and is even more drastic than Rule 9(i) to that extent.

14. Since the appellant No. 1 Company is found to be "the State" within the meaning of Art. 12 and is, therefore, amenable to the jurisdiction of the High Court under Art. 226 of the Constitution, its terms must comply with the requirements of Arts. 14 and 16 of the Constitution. As pointed out above, Rule 9(i) was found to be arbitrary and unreasonable and opposed to the principles of natural justice by the Supreme Court in the aforementioned case. Clause 2.18 of the Staff Regulations with which we are concerned is even more drastic than Rule 9(i) with which the Supreme Court was concerned and must therefore, a fortiori, be struck down as violative of Art. 14 of the Constitution. Similar is the view expressed by the Supreme Court in *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, wherein Rule 31(v) of the Indian Tourism Development Corporation Conduct, Discipline and Appeal Rules, 1978 similar to Clause 2.18 with which we are concerned was struck down as violation of Arts. 14 and 16(1) of the Constitution.

15. In view of the aforesaid two decisions of the Supreme Court dealing with clauses similar to Clause 2.18 of the Staff Regulation, we must agree with the learned single Judge that the said clause on which the order of termination is based on opposed to public policy and, therefore, void u/s 23 of the Contract Act as well as ultra vires Arts. 14 and 16 of the Constitution. In view of the above, we must answer the second question in the affirmative.

16. Having come to the conclusion that the first appellant-Company is "other authority" and therefore "the State" within the meaning of Art. 12 of the Constitution, and having found Clause 2.18 of the Staff Regulations to be violative of Section 23, Contract Act and Arts. 14 and 16 of the Constitution, we must hold that the order of termination of service which is solely based on Clause

2.18 of the Staff Regulations is unsustainable in law.

17. The next question then is whether this Court is competent to strike down the order and to grant the relief sought by the respondent. On behalf of the applicants it is contended that this Court was not competent to entertain the petition and grant the reliefs sought by the respondent-employee as no part of the causes of action arose within the jurisdiction of this Court. Article 226 empowers the High Court to issue to any person or authority, including in appropriate cases any Government, throughout the territories in relation to which it exercises jurisdiction, directions, orders or writs for the enforcement of any of the rights conferred by Part III and for any other purpose. Clause (2) of Art. 226 provides that such power may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority is not within those territories. Therefore, it is obvious that atleast a part of the cause of action must be shown to have arisen within the jurisdiction of this Court to enable it to grant any relief sought by the respondent-employee. The learned single Judge has come to the conclusion that since the order of termination of service dated April 21, 1980 was communicated to the respondent employee at Ahmedabad, the consequence of the order fell at Ahmedabad and, therefore, this High Court was competent to entertain the writ petition and grant the reliefs sought. In taking this view, the learned Judge placed strong reliance to the decision of the Supreme Court in *State of Punjab Vs. Amar Singh Harika*, . In that case the question which the Court was required to consider was : When does the dismissal of a Government servant become effective ? Does it become effective on the mere passing of the order of dismissal or only after it is published and communicated to the officer concerned ? In that case Amar Singh, Assistant Director, Civil Supplies, Pepsu, was dismissed from service by an order stated to have been passed on June 3, 1949. Amar Singh was informed about the same by one Bishanchand, Assistant Controller, Pepsu on May 28, 1951. Thereupon Amar Singh filed a suit for a declaration that the order of dismissal was illegal and inoperative. The suit filed by Amar Singh was resisted by the State Government inter alia on the ground that it was incompetent in law. The trial Judge came to the conclusion that the order of dismissal was illegal and void and that the suit was within time but according to him it was not maintainable in law. The suit was dismissed and the matter was carried in appeal to the High Court. The High Court upheld the findings of the trial Judge as regards the legality and validity of the dismissal order and the question of limitation but reversed the finding as regards the maintainability of the suit holding that the suit was maintainable. It therefore, passed a decree in favour of Amar Singh against which the State went in appeal to the Supreme Court. One of the questions which the Supreme Court was required to consider was as to when the order of dismissal became effective. The evidence on record went to show that Amar Singh learnt about his dismissal for the first time on May 28, 1951 when he was informed about the same by Bishanchand. Before the High Court as

well as the Supreme Court it was urged that the order of dismissal must be deemed to have taken effect from June 3, 1949 when it was passed, a submission which was rejected by both the Courts. It was held that mere passing of the order of dismissal was not enough to make it effective unless it was published and communicated to the concerned officer. The Supreme Court observed at p. 91 :

"It may be that in some cases the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned."

It is obvious that unless an order of dismissal is communicated to the concerned employee, it cannot be given effect for the simple reason that the concerned employee will continue to discharge his duties and functions unless he has been informed that his services are dispensed with. Even after an order of dismissal is passed by the competent authority but before it is communicated, the competent authority may on second thought revise its decision and refuse to communicate the order of dismissal to the concerned employee. Therefore, even though theoretically the competent authority can be said to have passed the order of dismissal, it does not become effective until it is communicated to the concerned employee resulting in the dispensation of his service. A similar view was taken by the Calcutta High Court in *Umasankar Chatterjee Vs. Union of India (UOI) and Others*, wherein the employee on being found guilty of the charges levelled against him was ordered to be removed from service on December 9, 1977. The order of removal was sent to the employee at his Calcutta residence. The employee challenged the order by a writ petition filed in the Calcutta High Court. The learned single Judge discharged the Rule Nisi on the ground of want of territorial jurisdiction. In appeal, the Division Bench of the Calcutta High Court held that although the order of removal from service was passed at New Delhi, its consequence fell on the employee at Calcutta where the order was communicated to him and hence the Calcutta High Court had jurisdiction to entertain the writ petition. In taking this view, reliance was placed on the decision of the Supreme Court in *Amar Singh's case (supra)*. Similar question was considered by the Kerala High Court in *Union of India Vs. P. Kunhabdulla*, . In that case the employee was removed from service by an order dated August 26, 1982 passed by the Divisional Operating Superintendent, Madras. The employee received a copy of the said order by registered post on September 11, 1982 while he was in Badagara within the State of Kerala. Thereupon, he moved the Kerala High Court for quashing the said order and for certain other consequential reliefs. It was contended before the learned single Judge that the High Court had no jurisdiction as no part of the cause of action had arisen within its jurisdiction. This contention was rejected by the learned Single Judge. In appeal, the Division Bench confirmed this view of the learned single Judge. The Allahabad High Court in *Secretary, Home Department, Government of*

Maharashtra v. Bansidhar and Others (1982) 2 SLR 475 was required to consider a similar contention. In that case the employee Wireless Operator, was dismissed from service by an order dated August 17, 1973 which was served on the employee on August 28, 1973 at his residence in district Pratapgadh, Uttar Pradesh. He filed a suit in the Court of Munsif, Kunda in Pratapgadh claiming certain reliefs against the order of dismissal. It was contended on behalf of the State of Maharashtra that since the order of dismissal was passed in Maharashtra, the Civil Court, Pratapgadh was not competent to entertain the suit. This contention was negated by the trial Court and the matter was carried in revision to the High Court. The High Court, relying on the decision of the Supreme Court in Amar Singh's case (supra), held that the order of dismissal became effectively only on the date it was served on the concerned employee. In other words, the service of the order of dismissal was considered as essential element constituting the cause of action. When one talks of cause of action one means the bundle of acts constituting cause of action, that is, the facts which the plaintiff must plead and prove to claim a judgment in his favour. It cannot be said that the communication of the order of dismissal is not one such fact in the basket of facts constituting the cause of action. It is a relevant fact as it is only on the communication of that order that the employee realises that his services have been dispensed with.

18. It is therefore plain from the above discussion that passing of a dismissal order is not enough, it cannot become effective unless it is published and communicated to the concerned employee. If an order of dismissal remains on the file of the authority passing it, it would not have effect unless the concerned employee is informed about the same and told not to report for work, In the present case also if the dismissal order were to remain on the file of the Chairman-cum-Managing Director of appellant No. 1 Company at New Delhi and not be communicated to its Calcutta Unit, the employee would report for work and the Officer in charge of the Calcutta Unit would obviously permit him to work. Only after the order is forwarded to Calcutta Unit, the Officer in charge of that Unit would refuse to permit the concerned employee to render service, in which case the said employee would have to be informed about the termination of his service. Therefore, one of the essentials of an effective dismissal order is communication thereof to the concerned employee and this, in our view, constitutes an important link in the chain of events constituting the cause of action. We are, therefore, of the opinion that the learned single Judge was right incoming to the conclusion that since the impugned order of dismissal was served on the respondent employee at Ahmedabad and the Ahmedabad Unit of the Company was directed to pay 90 days' notice pay to him, the respondent employee was entitled to move this Court for an appropriate relief necessitated on the communication of the impugned order.

19. Mr. Bhatt, learned Advocate for the appellants, however, invited our attention to the decision of the Bombay High Court in Joshi W.W. Vs. State of Bombay, . In that case, the petitioners before the High Court were in the service of the former

State of Madhya Pradesh. Their services were terminated by the orders of the Government of the then State of Madhya Pradesh before the States Reorganisation Act, 1956 came into force. Two of the employees were serving on the date of termination of their services in the territories forming part of the State of Bombay. These two employees challenged their dismissal by petitions under Art. 226 and 227 of the Constitution on the ground of contravention of Art. 311(2) of the Constitution. Before the then High Court of Judicature at Nagpur these petitions were filed against the State of Madhya Pradesh. On a certificate issued by the Chief Justice of the High Court of Judicature at Nagpur, these petitions were transferred. During the pendency of the petitions, the State of Bombay was impleaded as a party. The third employee approached the Bombay High Court directly after the States Reorganisation Act came into force. All the petitioners contended that their petitions were maintainable against the State of Bombay. The question which arose for consideration was whether the petitioners were entitled to the reliefs asked for by them against the State of Bombay. This question had to be resolved in the context of Secs. 87, 88 and 116 of the States Reorganisation Act, 1956. Clause (b) of Section 88 provided that where, immediately before the appointed day, an existing State is subject to any liability in respect of an actionable wrong other than breach of contract, that liability shall, if there are two or more successor States and the cause of action arose wholly within the territories of one of them, be a liability of that successor State. To call in aid this clause it was necessary for the petitioners to show that the cause of action arose in its entirety within the territories which as from that day i.e. November 1, 1956, formed part of the territories of one of the successor States, the State of Bombay. Dealing with this question the Division Bench speaking through Tambe, J. observed at pp. 491-492 as under :

"The meaning of the term "cause of action" as is generally understood is "every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court". The petitioners' claim is that their services have been wrongly terminated. Undoubtedly, therefore, the fact that the order of termination of service was made would form part of a cause of action, and it would arise at the place the order is made. It is the contention of all the petitioners that once they establish that orders for the termination of their services have been made it was sufficient to entitle them to claim relief at the hands of this Court. All these orders were made in Nagpur, which at the material time was the seat of the Government of the former State of Madhya Pradesh. The cause of action, therefore, in its entirety arose at Nagpur which now forms the territory of the present State of Bombay. Clause (b) of Section 88 is thus fully attracted to the facts of all the three cases. It is not possible for us to concede that to sustain a challenge to the termination of service under Art. 226 of the Constitution it is sufficient for the Government servant only to establish that an order for termination of his service has been made. That fact by itself alone cannot afford to him a ground to claim relief at the hands of this Court. He must further prove that the consequences of that order fell on him i.e. as a

consequence of that order he, in fact, was removed from service. In our opinion, therefore, for a claim of this kind the cause of action would arise at a place where the order of termination of service was made and also at a place where its consequences fell on the servant."

Mr. Bhatt submitted that it was only for the convenience of the respondent-employee that the Ahmedabad Unit of the first appellant Company was directed to communicate the order and pay 90 days' notice pay to the respondent-employee to put an end to his services. Be that as it may, the fact remains that the order of termination of service, though passed at New Delhi, was communicated to the respondent-employee at Ahmedabad since he was at the relevant time on leave. Whether it was for the convenience of the respondent employee or for any other reason is not material, what is material is the fact that it was communicated to him at Ahmedabad. In our view, therefore the decision on which Mr. Bhatt places reliances cannot come to the rescue of the appellants since it is terms states that the cause of action would arise not only at the place where the order of termination of service was made but also at the place where its consequences fell on the employee. We cannot subscribe to the submission that the consequence of the termination order fell on the respondent-employee at Calcutta, the fact that it was communicated at Ahmedabad notwithstanding merely because the employee was posted at Calcutta Unit. It may be that on the receipt of the order by the Calcutta Unit, a part of the cause of action can be said to have arisen at Calcutta also, but that cannot nullify the fact that the consequences of the order fell on the respondent-employee when he was informed about the same at Ahmedabad. We are, therefore, of the opinion that the aforesaid decision in fact is an authority for the proposition that a part of the cause of action arose at the place where the order of termination of service was communicated to the concerned employee. Another Division Bench of the Bombay High Court in a subsequent case of *Damomal Kausomal Raisinghani Vs. Union of India and Others*, held that the High Court can exercise jurisdiction if whole or part of any cause of action arises within its territories. In that case the order was passed by the Additional Settlement Commissioner, Delhi, but the consequence of that order had fallen on the petitioner at Bombay. The High Court held that it had jurisdiction to entertain the petition and grant appropriate reliefs. We are, therefore, clearly of the view that this High Court was entitled to entertain the petition and grant such relief or reliefs as it considered appropriate in the facts and circumstances of the case.

20. We are pained to note that even after the clear pronouncement of the Supreme Court in *Central Inland Water Transport Corporation Ltd. (supra)* holding Rule 9(i) of the Service, Discipline and Appeal Rules of the Corporation violative of Section 23 of the Contract Act and Arts. 14 and 16 of the Constitution, the appellants have tried to support an order based on a similar rule not only before the learned single Judge but also in appeal before us on the technical ground of maintainability of the petition. We fail to understand how it would advance the interest of the first appellant Company if the respondent

employee is relegated to a suit or asked to approach the Delhi or the Calcutta High Court if the fate of the litigation stands concluded by the aforesaid decision of the supreme Court. In fact without making it a prestige issue if the appellants had taken a timely decision that would not have been required to pay salary and allowances to the employee without taking work from him atleast for the period subsequent to the decision of the Supreme Court.

21. These were the only submissions made on behalf of the appellants as we do not find merit in any of them, we dismiss this appeal with costs.