(1978) 08 KAR CK 0029

In the Karnataka High Court

Case No : Writ Petition No. 1724 of 1975

P.V. Nayak APPELLANT

Vs

Syndicate Bank and Another RESPONDENT

Date of Decision : 10-08-1978

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 — Section 3, 3 (3), 7, 7 (2)
Constitution of India, 1950 — Article 12, 226, 289
Syndicate Bank Officers (Conditions of Service) Rules, 1966 — Rule 36, 5

Citation : (1979) 49 CompCas 387(1) : (1979) 39 FLR 265 : (1978) ILR (Kar) 1858 : (1979) 2 LLJ 176

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. Whether the Syndicate Bank, which is a corporate body constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as "the Act") falls within the definition of the word "State" as defined in Art. 12 of the Constitution and consequently a writ petition is maintainable under Art. 226 of the Constitution against the orders passed by it against its employees in contravention of the rules regulating their conditions of service ? is the question that arises for consideration in this case.

2. Facts : The petitioner was appointed as a Clark on the establishment of the Syndicate Bank on April 25, 1960. He was confirmed in the said post with effect from March 25, 1961. At that time, the Syndicate Bank was a banking company. The said Bank was taken over along with other Banks under the provisions of the Act. Thereafter, the petitioner was promoted as an officer by the order of the general manager dated October 17, 1973 (Ext. A). He was placed on probation for one year. Before the expiry of one year, by order dated August 19, 1974 (Ext. C), the services of the petitioner were terminated. Against the order of termination of his services, the petitioner preferred an appeal to the chairman and managing director of the Syndicate Bank through his appeal dated

September 13, 1974. The appeal was rejected as per order dated November 15, 1974 (Ext. F). It is, thereafter, the petitioner has presented this writ petition aggrieved by the order terminating his services.

3. Sri Tukaram S. Pai, learned counsel for the respondents, has raised the following preliminary objection :

"The Syndicate Bank is not an authority within the meaning of that word contained in Art. 12 of the Constitution and consequently it is also not an authority against which a writ can issue under Art. 226 of the Constitution."

4. In support of his submission, he relied on the decision of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , in which Art. 12 of the Constitution was interpreted. In the said case, the Supreme Court held that the Oil & Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance Corporation, all of which are constituted under the law governing their constitution, are "authorities" within the meaning of that word contained in Art. 12 of the Constitution, which defines the word "State" for purposes of Part III of the Constitution.

5. The contention of the learned counsel appearing for the respondents is that the tests applied by the Supreme Court on the basis of which it held that the aforesaid three bodies are authorities as defined in Art. 12 of the Constitution are not applicable to the case of the Syndicate Bank through it owes its existence to an Act enacted by Parliament. He particularly placed reliance on paras 64, 65 and 66, which read as follows :

"64. The Oil and Natural Gas Commission Act confers power of entry on employees of the Commission upon any land or premises for the purpose of lawfully carrying out works by the Commission. The members and employees of the Commission are public servants within the meaning of S. 21 of the Indian Penal Code. The Commission enjoys protection of action taken under the Act.

65. The Life Insurance Act provides that if any person lawfully withholds or fails to deliver to the Corporation any property which has been transferred to and vested in the Corporation or wilfully applies them to purposes other than those expressed or authorised by the Act, he shall, on the complaint of the Corporation be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both. The Corporation also enjoys protection of action taken under the Act.

66. The Industrial Finance Corporation Act states that whoever in any bill of leading, warehouse receipt or other instrument given to the Corporation whereby security is given to the Corporation for accommodation granted by it, wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years

or with fine which may extend to two thousand rupees or with both. Further, whoever without the consent in writing of the Corporation uses the name of the Corporation in any prospectus or advertisement shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. The Corporation enjoys protection of action taken under the Act. A company incorporated under the Indian Companies Act does not enjoy these privileges."

6. He submitted that in para 64, the supreme Court held that the Oil and Natural Gas Commission is an authority on the ground that the Act confers power of entry on employees of the Commission upon any land or premises for purposes of lawfully carrying on the works by the Commission and the members and employees of the Commission are public servants within the meaning of S. 21 of the Indian Penal Code and there is no corresponding provision in the Act which confers such power on the Syndicate Bank. As regards the Life Insurance Corporation, he pointed out that in para 65, the test applied by the Supreme Court for coming to the conclusion that the Life Insurance Corporation is an authority is that the Life Insurance Act provides that a person who wilfully applies the property of the Corporation for any other purposes other than those expressed or authorised by the Act, is punishable on a complaint made by the Corporation to that effect. He submitted that no such power is conferred on the Syndicate Bank under the Act. He next referred to para 66 which deals with the Industrial Finance Corporation and submitted that the said Corporation was held to be an "authority" on the basis of the provisions in the law under which it was constituted to the effect that whoever makes any false statement or knowingly permits any false statement to be made in connection with any bill of loading, warehouse receipts or other instruments given to the Corporation for accommodation granted, is punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both and the Act also further provides that any person, who without the consent of the Corporation, uses the name of the Corporation in any prospectus or advertisement is also liable for punishment. He submitted that there is no similar provision in the Act under which the Syndicate Bank is constituted.

7. The learned counsel for the respondents next relied on para 67 of the judgment and submitted that it is on the basis of the provisions referred to in paras. 64, 65 and 66 found in the enactments under which the Oil and Natural Gas Commission, the L.I.C. and the Industrial Finance Corporation, respectively, were constituted that they were held to be authorities as defined in Art. 12 of the Constitution and as there are no similar provisions in the Act under which the Syndicate Bank was constituted it cannot be held to be an authority for purposes of Art. 12 of the Constitution.

8. Sri K. J. Shetty, learned counsel for the petitioner, submitted that the Syndicate Bank having been constituted under the provisions of the Act and also having regard to the various powers conferred on it in the Act, the Syndicate

Bank falls within the definition of the word "authority" as defined in Art. 12 of the Constitution. He submitted that the tests referred to by the Supreme Court in paras. 64, 65 and 66 of the judgment in Sukhdev Singh''s case, (supra) with reference to the Oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Financial Corporation, respectively, are not the exclusive tests on the basis of which the Supreme Court has held that those three bodies are authorities for purposes of Art. 12 of the Constitution and the earlier part of the discussions clearly indicate that the said conclusion was reached on the ground that those bodies have been constituted under the law enacted by Parliament and also on the ground that the exclusive control of those corporations are vested in the Government.

9. Before considering the rival contentions urged for the petitioner and the respondents, it is necessary to set out the provisions of Art. 12 of the Constitution which reads as follows :

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

10. The said article defines the word "the State" for the purpose of Part III of the Constitution. It is an inclusive definition. According to the said definition, the word "State" in Part III of the Constitution included 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 said article came up for interpretation in the case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, The Rajasthan State Electricity Board is constituted under the provisions of the Indian Electricity (Supply) Act, 1948. In the said case, the question that arose for consideration by the Supreme Court was whether an electricity board constituted under the provisions of a Central law like the Electricity (Supply) Act, falls within the definition of the word "authority" and consequently, is a "State" as defined in Art. 12 of the Constitution. The matter came up before the Supreme Court on an appeal against the judgment of the Rajasthan High Court. The Rajasthan High Court held that the term "authorities" occurring in Art. 12 could only mean a person or group of persons, who exercise the legislative and executive functions of a State or through whom the State exercises its legislative or executive powers. The Rajasthan High Court came to the above conclusion after applying the principles of ejusdem generis for purposes of interpreting the expression "other authority" contained in Art. 12 of the Constitution. The Court held that the "authorities" referred to in Art. 12 of the Constitution must be those which are similar to the Government and Parliament of India and the Government and Legislature of each of the States, which precede the word "authorities" in Art. 12. The Supreme Court ruled that the High Court was in error in applying the principles of ejusdem generis for the purpose of interpreting the expression

"other authorities" in Art. 12 on the ground that in order to apply the principle of ejusdem generis rule, there must be a distinct genus or category running through the bodies already named. The Supreme Court held that they are unable to find any common genus running through the bodies specified in Art. 12 of the Constitution as the bodies referred to in the article cannot be placed in one single category on any rational basis. Accordingly, the Supreme Court held that the doctrine of ejusdem generis rule cannot apply to the interpretation of the expression "other authorities" in Art. 12 of the Constitution and the ordinary dictionary meaning should be given to the word "authorities" used in that article. The relevant portion of the judgment is contained in para. 5 which reads as follows (See Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others,

"5. The meaning of the word ''authority'' given in Webster''s Third New International Dictionary, which can be applicable is ''a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing Public enterprise.'' This dictionary meaning of the word ''authority'' is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression ''other authorities'' is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words ''other authorities'' are used in Art. 12 of the Constitution."

11. As is clear from the above portion of the judgment, the Supreme Court held that the dictionary meaning of the word "authority" is wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions and further it is also wide enough to include within it every authority created by a statute and functioning within the territory of India or under the control of the Government of India and there is no reason to narrow down the said meaning. Thereafter, the Supreme Court, after referring to Art. 46 contained in Part IV of the Constitution which directs that the State shall promote with special care the educational and economic interests of the weaker sections of the people, held that the definition of the word "authorities" in Art. 12 of the Constitution includes all bodies created for the purpose of promoting the educational and economic interests of the people.

12. Shortly after the above judgment was delivered by the Supreme Court, a question whether the Bangalore University, which is constituted under the provisions of the Bangalore University Act enacted by the State Legislature, is or is not "State" for the purpose of Art. 12 of the Constitution, came up before a Division Bench of this Court in G. V. Sundaresh v. Bangalore University (1967) 2 Mys. L.J. 592. The Division Bench interpreted Art. 12 of the Constitution. The relevant portion of the judgment is at para. 8, which reads as follows :

"8. The word ''authority'' literally means a person or a body exercising power of having a legal right to command and be obeyed. Such authority has power under the context of Art. 12 to make laws, orders regulations, etc. having the force of law. Considering the various powers which the University possesses as discussed above, we find it difficult to agree that the expression ''other authority'' occurring in Art. 12 would not cover a University. Within the sphere of its activities in the field of higher education and research the University has the power of legislation in the form of Ordinances, Statutes, Regulations or Rules and possesses executive power in respect of the various institutions of higher education working within its jurisdiction. It is obvious that since the University exercises powers conferred on it by the Act and is further clothed with the power of promulgating subordinate legislation it does exercise governmental power, in the ordinary sense, within the limited field of its activity. The authority of the State is behind its acts and its actions should, therefore, be in conformity with the same principles, as the actions of the State are required to be, under Part III of the Constitution."

13. Thereafter, referring to the judgment of the Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, the relevant extract of which is given above, it was held as follows :

"In view of this principle laid down by the Supreme Court, we have no doubt in holding that a University falls within the meaning of the expression ''other authorities'' occurring in Art. 12 of the Constitution and that Ordinance or Statutes or Regulations framed by a University will have to conform to the principles of Fundamental Rights laid down in Part III of the Constitution."

14. In the case of 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, the Supreme Court applied the ratio of the Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , in coming to the conclusion as to whether the Oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance Corporation, all of which are constituted by law, fall within the definition of the word "authority" as defined in Art. 12 of the Constitution. After making a detailed reference to the various provisions of the Acts under which the above bodies came to be established, the Supreme Court held as follows in paras. 60, 61 and 62 :

"60. The Oil and Natural Gas Commission is owned by the Government. It is a statutory body and not a company. The Commission has the exclusive privilege of extracting petroleum. The management is by the Government. It can be dissolved only by the Government.

61. The Life Insurance Corporation is owned by the Government. The Life Insurance business is nationalised and vested in the Corporation. No other insurer can carry on life insurance business. The management is by the Government. The dissolution can be only by the Government.

62. The Industrial Finance Corporation is under the complete control and

management of the Central Government. Citizens cannot be shareholders. Certain specified institutions like Scheduled Banks, Insurance Companies, Investment Trusts and Co-operative Banks may apply for the shares. The Central Government may acquire shares held by shareholders other than the Development Bank. After such acquisition, the Government may direct that the entire undertaking of the Corporation shall be vested in the Development Bank. The Corporation cannot be dissolved except by the Government."

15. It is in the light of the conclusions reached as to the effect of the provisions of the concerned enactments as contained in paras. 60, 61 and 62, that the Supreme Court proceeded to find out whether those bodies fall within the definition of the word "authorities" as defined in Art. 12 of the Constitution. This is clear from para 63 of the judgment, which rends as follows :

"63. In the background of the provisions of the three Acts under consideration, the question arises as to whether these corporations can be described to be authorities within the meaning of Art. 12 of the Constitution. In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , it was said that the power to give directions, the disobedience of which must be punishable as a criminal offence would furnish one of the reasons for characterising the body as an authority within the meaning of Article 12. The power to make rules or regulations and to administer or enforce them would be one of the elements of authorities contemplated in Art. 12. Authorities envisaged in Art. 12 are described as instrumentalities of State action. On behalf of the State it was contended that the Oil and Natural Gas Commission as well as the Industrial Finance Corporation was not granted immunity from taxation and therefore the liability to be taxed would indicate that the Corporation was not a State authority. Reference is made to Art. 289 which speaks of exemption of property and income of a State from Union taxation. The liability to taxation will not detract from the Corporation being an authority within the meaning of Art. 12. Article 289 empowers the Union to impose tax in respect of trade or business carried on by or on behalf of the State."

16. Therefore, the learned counsel for the respondents is not right in stating that it is only because of the powers vested in these bodies referred to in paras. 64, 65 and 66, the Supreme Court reached the conclusion that those bodies are "authorities" and fall within the definition of the word "State". The real basis for the conclusion that the aforesaid statutory bodies fall within the definition of the word "authorities", as can be seen from paras. 60, 61 and 62, are -

(i) They are constituted by law;

(ii) The management is vested in the Government; and

(iii) They can be dissolved only by the Government.

17. Now, I shall proceed to consider the provisions of the Act in order to find out whether the Syndicate Bank also falls within the definition of the word "State" as

defined in Art. 12 of the Constitution. The relevant provisions of the Act, which are necessary for arriving at the above decision, are as follows :

(i) Section 3 : S. 3 of the Act provides that on the commencement of the Act there shall be constituted such corresponding new banks as are specified in the First Schedule. The Syndicate Bank Ltd., an existing bank, was converted into Syndicate Bank which is the corresponding new bank. It was brought into existence by the force of S. 3 of the Act. Under Sub-s. (3) of S. 3, the entire capital of the Syndicate Bank Stood vested in, and allotted to, the Central Government.

(ii) Section 7 : Under sub-s. (2) of S. 7 of the Act the General superintendence, direction and management of the affairs of the bank stand vested in a board of directors, Sub-section (3) of S. 7 of the Act confers power on the Central Government to constitute the first board of directors of corresponding new bank in consultation with the Reserve Bank of India and they are entitled to continue until the new board of directors are appointed under the scheme required to be prepared under S. 9 of the Act.

(iii) Section 8 : This section brings the Syndicate Bank and other new banks brought into existence by the Act fully under the control and direction of the Central Government. According to this section every new bank is required to discharge its functions issued by the Central Government in matters of policy in consultation with the Governor of the Reserve Bank of India.

(iv) Section 9 : This section authorises the Central Government to prepare a scheme for carrying out the provisions of the Act in consultation with the Reserve Bank of India. Under clause (a) of sub-s. (2) of S. 9 such scheme may provide for regulating the capital structure of the corresponding new bank subject to the condition that the paid up capital of any such bank shall not be in excess of rupees fifteen crores. Clause (b) of sub-s. (2) of S. 9 provides that the scheme may cover the constitution of the board of directors and all such matters thereto as the Central Government may consider it necessary or expedient.

(v) Section 10 : This section makes detailed provision regarding closure of accounts and disposal of profit. The most important part of the said section which is relevant for our purpose is sub-s. (7) of S. 10. The said sub-section provides that after making provides that after making provision for doubtful debts, depreciation in assets, contributions, etc., a corresponding new bank shall transfer the balance of profits to the Central Government.

(vi) Section 16 : This section indemnifies the custodian and all officers of the corresponding new bank against all losses and expenses incurred by him in or in relation to the discharge of his duties except such as have been caused by his own wilful act or default. Similarly, sub-s. (2) of S. 16 of the Act provides that a director or member of a local board of committee of a corresponding new bank shall not be responsible for any loss or expenditure caused due to any wilful act or default on the part of such director or member

(vii) Section 19 : This is a very important provision which confers power on the corresponding new bank to make regulations in respect of various matters. Clause (d) of sub-s. (2) of S. 19 employers the board of directors of the new bank to frame regulations regulating the conditions or limitations, subject to which the corresponding new bank may appoint advisers, officers or other employees and fix their remuneration and other terms conditions of service. Clause (f) of sub-s. (2) of S. 19 authorises the board of directors of the new bank to make regulations for the establishment and maintenance of superannuation, pension, provident and other fund for the benefit of officers or other employees of the corresponding new bank or the dependents of such officers or other employees and the granting of superannuation allowances, annuities and pensions payable out of such funds. Clause (j) of sub-s. (2) confers power on the board of directors of the new bank to make regulations regulating the conditions and the requirements subject to which loans or advances may be made or bills may be discounted or purchased by the corresponding new bank. Clause (k) of sub-s. (2) authorises the regulations to be made in respect of persons or authorities who shall administer any pension or other fund constituted for the benefit of officers or other employees of the corresponding new bank of their dependents. Sub-section (3) of S. 19 provides that until any regulation is made under sub-s. (1) of S. 19, the articles of association of the existing bank and every regulation, rule, bye-law or order made by the existing bank shall, if in force at the commencement of the Act, be deemed to be the regulations made under sub-s. (1). In other words until statutory regulations are framed by the board of directors in exercise of their power under S. 19 of the Act all existing rules are given statutory force by virtue of sub-s. (3) of S. 19.

18. The above analysis of the various provisions of the Act conclusively establishes that like the Oil and Natural Gas Commission and the Life Insurance Corporation, which were held to be authorities within the meaning of that word used in Art. 12 of the Constitution by the Supreme Court, the Syndicate Bank is also brought into existence by an Act of Parliament. The entire management and control is vested in the Government and it can be dissolved only by the Government. The balance of profit is required to be transferred to the Central Government. The Bank has power to make regulations on various matters specified in S. 19 of the Act. It is a body constituted by law for serving economic interest of the weaker Sections of the people as envisaged in Art. 46 of the Constitution. Even assuming that the Syndicate Bank is required to carry on activities which are commercial in nature, even so it comes within the ambit of the power conferred on the State under Art. 289 of the Constitution and, therefore, even if it carries on activities which are in the nature of trade or business, it is no ground to exclude the bank from the definition of the word "State" as used in Art. 12 of the Constitution as specifically laid down by the Supreme Court in Rajasthan Electricity Board''s case, (supra).

19. The above conclusion can be reached by another process. Another attribute of an "authority" is the possession of the power to make rules or regulations

having the force of law. Section 19 of the Act confers power on the Syndicate Bank to make regulations on various matters including conditions of service of its employees. The question is whether or not the regulations so framed have statutory force and whether those regulations are enforceable by means of a writ under Art. 226 of the Constitution. Such a question came up for consideration before a Full Bench of this Court in A. J. Aramha v. Mysore State Road Transport Corporation (1974) 1 Mys. L.J. 344 . The Full Bench after considering the judgment of the Supreme Court in Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, , held as follows :

"In the light of the pronouncements of the Supreme Court, it appears to us that the Regulations made by the Corporation within the ambit of S. 45(2)(c) of the Act, must be treated for all purposes of construction or obligation exactly as if they (such Regulations) were in the Act and have the same effect as if they are contained in the Act and such Regulations cannot be described as, or equated with, administrative directions; and if there is any violation of such Regulations, unless they are only directory, an employee of the Corporation would have the right to challenge the decision of the Corporation."

20. Therefore, the regulations which the Syndicate Bank has the power to frame in respect of various matters specified in S. 19, within the sphere of its activity, have the force of law and consequently obedience to the same, when violated, is enforceable. This is another criteria to show that the Syndicate Bank is an "authority" within the meaning of that word.

21. Learned counsel for the petitioner relied on a decision of the Gujarat High Court in Sukhdev Ratilal Patel Vs. Chairman, Bank of Baroda and Another, In the said case, the Bank of Baroda which is one of the nationalised banks along with the Syndicate Bank is held to be a "State" for purposes of Art. 12 of the Constitution. Similar view is taken by the High Court of W.B. Correya Vs. Dy. Managing Director, Indian Airlines and Others, by the Delhi Court in A. N. Gupta v. State Bank of India (1975) S.L.R. 2 Delhi 397 (sic); by the Punjab and Haryana High Court in Lachhman Dass Agarwal v. Punjab National Bank (1977) 52 F.J.R. 306 ; and by the High Court of A.A. Nathan Vs. United India Fire and General Insurance Company, I am in respectful agreement with the views expressed in these decisions.

22. In the light of the above discussion, I reject the preliminary objection raised on behalf of the respondents and hold that the Syndicate Bank which came into existence by virtue of the provisions of the Act is an "authority" and falls within the meaning of the word "State" as used in Art. 12 of the Constitution.

23. If the Syndicate Bank is held to be an "authority" within the meaning of that word as used in Art. 12 of the Constitution and consequently a "State" for purposes of Part III of the Constitution, it is not disputed on behalf of the respondents that it also falls within the meaning of the word "authority" as used in Art. 226 of the Constitution and is amenable to the writ jurisdiction of the

Court if there is any violation of the regulations framed under S. 19 of the Act or regulations deemed to have been framed under S. 19 of the Act.

24. Now, coming to the merits of the case, the petitioner is governed by the Syndicate Bank Officers'' (Conditions of Service) Rules, 1966 (hereinafter referred to as "the Rules"), which were framed by the erstwhile Syndicate Bank Ltd. and which is given statutory force by virtue of sub-s. (3) of S. 19 of the Act. The case of the petitioner is that as he was already holding the post of a Clark on the establishment of the Syndicate Bank and he was promoted to the cadre of officers and he was placed on probation for a period of one year, according to the conditions incorporated in the order of promotion read with Rule 5 of the Rules, even if he was found unsuitable for the post of an "officer", he could have been reverted to the post of Clark but his services could not have been terminated.

25. Learned counsel for the respondents, however, submitted that as the petitioner was appointed as an officer, it was competent for the respondents to terminate his services in view of Rule 36 of the Rules, which reads as follows :

"36. The management may terminate the services of any officer by giving him three months'' notice in writing or 3 months'' salary in lieu of such notice if in the opinion of the management, continuation in service of such officer is not desirable in the interest of the Syndicate Bank."

26. I shall now consider the rival contentions urged for the petitioner and the respondents. As stated earlier, the petitioner, who was a permanent Clark on the establishment of the Syndicate Bank, was appointed by way of promotion to the cadre of officers as per order dated October 17, 1977 (Ext. A). The relevant portion of the appointment order reads as follows :

"We are pleased to inform you having regard to your performance at the test held on 26th August, 1973, that you have been promoted to the cadre of officers in the Bank.

1. The promotion will be effective from the date of your joining Kerur Branch.

2. You are placed in the Junior Grade of officers and from the date of your promotion you will be governed by the Syndicate Bank Officers'' (Conditions of Service) Rules, 1966, for the time being in force. A copy of the said rules is enclosed herewith.

3. In the first place you will be on probation for a period of one year which period may be extended or reduced at the discretion of the management in terms of the aforesaid Rules. But, however, please note that until you are confirmed in the grade of officers in writing you will continue to be on probation ......

6. During the period of probation if you are not found suitable to be absorbed permanently in the cadre of junior officers, you are liable to be reposted to your present cadre treating you as if you had continued in the said cadre without the present promotion."

27. Rule 5 of the Rules which is relevant for this case reads as follows :

"5. Probation. - (a) Every officer appointed shall be initially on probation for a period of one year or such extended or reduced period at the discretion of the management.

(b) Every officer on successful completion of the probationary period shall be confirmed in the cadre of officers applicable to him but the management at its sole discretion may, -

(i) in the case of a direct recruit terminate the services of the probationer without assigning any reason whatsoever at any time during the probationary period paying a month''s salary;

(ii) in the case of appointment by promotion, revert him to his previous cadre, at any time during probation."

28. Under Rule 5 of the Rules set out above, the only power available to the Syndicate Bank in the event of the petitioner being not found suitable for confirmation in the post of officer, is to revert him to the lower post. Para. 6 of the appointment order also clearly states that if the petitioner is not found suitable to be absorbed permanently in the cadre of junior officers, he is liable to be reposted as clark treating him as if he had continued in the said cadre without promotion. Therefore, the Syndicate Bank in terminating the services of the petitioner has violated Rule 5 of the Rules.

29. Learned counsel for the respondents, however, relied on Rule 36 of the Rules. The said rule authorises the management to terminate the services of any officer by giving him three months'' notice in writing or three months'' salary in lieu of notice, if the management is of the opinion that the continuation of services of any such officer is not desirable in the interest of the Syndicate Bank. He argued that the management had the choice of either reverting the petitioner to the post of clark from which post he was promoted acting under Rule 5 or to terminate his services under Rule 36 which is also one of the rules contained in the Rules.

30. I am unable to agree. Rule 36 is available only against a person who has become a full-fledged officer after confirmation and not against a probationer. The word "officer" used in Rule 36 can be understood only in that sense. Rule 5 of the Rules applies to officers, who still on probation. According to the said rule, the services of a person, who is directly recruited to the post of officer and who is placed on probation as required by the said rule, is liable to be terminated if the probationer is not found suitable for confirmation by giving him a month''s salary. But if the concerned officer was appointed by way of promotion and placed on probation as required under Rule 5, the only power available under the Rules is to revert him to the lower post. Therefore, whether a person is appointed as an officer by way of direct recruitment or by way of promotion, the rule which regulates the termination or reversion, as the case may be, until the concerned person is confirmed in the post of officer is Rule 5. The condition in

para. 6 of the appointment order of the petitioner is in conformity with Rule 5 of the Rules. Rule 36 is clearly not applicable to the case of the petitioner. Therefore, the impugned order made by the respondents against the petitioner terminating his services invoking Rule 36 is not authorised by the Rules. The impugned order, therefore, is liable to be quashed.

31. In the result, my conclusions are as follows :

(i) The Syndicate Bank established under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, is "State" as defined in Art. 12 of the Constitution.

(ii) A writ petition under Art. 226(1)(b) of the Constitution for the enforcement of any rules framed by it under S. 19 of the Act or deemed to have been framed under S. 19 of the Act, is maintainable.

(iii) The impugned order terminating the services of the petitioner is violative of Rule 5 of the Syndicate Bank Officers'' (Conditions of Service) Rules, 1966, which are deemed to be the Rules framed under S. 19 of the Act, as provided in sub-s. (3) of S. 19 of the Act.

32. For the reasons stated above, I make the following order :

(i) Rule is made absolute.

(ii) The impugned order dated August 19, 1974 (Ext. C) issued by the 2nd respondent is quashed.

(iii) The petitioner is entitled to all consequential benefits flowing from the quashing of the order.

(iv) The petitioner is entitled to the costs Advocate''s fee Rs. 250.

