

(1973) 09 MAD CK 0020
In the Madras High Court

The Coimbatore Municipality

APPELLANT

Vs

K. Thiruvenkataswami

RESPONDENT

Date of Decision : 15-09-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 246, 254
Employees State Insurance Act, 1948 — Section 2(12)
Factories Act, 1948 — Section 2
Government of India Act, 1935 — Section 100, 107, 107(1), 311, 8(1)
Industrial Employment (Standing Orders) Act, 1946 — Section 1(3), 15, 2, 8(8)
Model Standing Orders — Order 21
Payment of Wages Act, 1936 — Section 2
Public Health Establishment (Local Authorities) Regulations 1940 — Regulation 19
Railways Act, 1890 — Section 2
Tamil Nadu District Municipalities Act, 1920 — Section 1(3), 10, 11, 12, 12A(1)
Tamil Nadu District Municipalities Rules, 1920 — Rule 14

Citation : (1973) ILR (Mad) 405

Hon'ble Judges : Palaniswami, J;Ismail, J

Bench : Division Bench

Advocate : S. Mohan, Government Pleader, for the Appellant; A. Ramachandran, for G.M. Nathan, V.M. Lenin, G.A. Ponnuswamy, Row and Reddy, N.G.R. Prasad and P. Chidambaram, for the Respondent

Final Decision : Dismissed

Judgement

Ismail, J.—These cases raise a question regarding the applicability of Industrial Employment (Standing Orders) Act, 1946, (Central Act XX of 1946), hereinafter referred to as the Standing Orders Act and in particular Standing Order 21 of the Model Standing Orders, framed by the Province of Madras in exercise of its powers conferred by Section 15 of the Standing Orders Act, to the employees of the Municipal Councils constituted under the Madras District Municipalities Act (Madras Act V of 1920), hereinafter referred to as the Municipalities Act. Though the writ appeal itself has become in fructuous by efflux of time, it is necessary to refer to the judgment which is the subject matter of that appeal, since practically every one of the Petitioners in the connected writ petitions (sic) upon the said

judgment in the affidavits filed in support of the respective writ petitions for claiming the reliefs they have prayed for.

2. The Appellant in Writ Appeal No. 503 of 1967 is the Coimbatore Municipality represented, by its Commissioner. The Respondent therein was an employee of the said Municipality working in the Electricity Department of the same. He was working at the relevant time as a wireman and he attained the age of 55 years on 26th December 1966. It was proposed to retire him from service in terms of the rules framed by the Province of Madras in exercise of the powers conferred on it by Section 74 of the Municipalities Act, since the age of superannuation for the municipal employees under Rule 14 of the said rules was attainment of 55 years of age. The Respondent in the writ appeal put forward the contention that Standing Order 21 of the Model Standing Orders which prescribed the age of superannuation as the attainment of 58 years applied to him and therefore he ought not to be retired on his attaining the age of 55. It is the correctness of that contention which was considered by Kailasam, J., in Writ Petition No. 2746 of 1966. This judgment of Kailasam, J., is reported as *Thiruvengkataswami. v. Coimbatore Municipality by its Commissioner* (1). The learned Judge posed for consideration the question whether the Electricity Department of the Coimbatore Municipality was an industrial establishment falling within the scope of the Standing Orders Act and answered the same in favour of the Petitioner in the writ petition. For the purpose of understanding the conclusion of the learned Judge, it is necessary to refer to certain statutory provisions. The Municipalities Act was passed in the year 1920 and Section 74 of that Act provided:

74. Subject to the provisions of this Act and any rules which the State Government may make, in this behalf the council may frame regulations in respect of officers and servants on the municipal staff:

- (a) fixing, the amount and nature of: security to be furnished;
- (b) prescribing educational or other qualifications;
- (c) regulating the grant of leave, leave allowances acting allowances and travelling allowances.
- (d) regulating the grant of pensions and gratuities;
- (e) establishing and maintaining, provident funds and making contribution thereto compulsory;
- (f) regulating conduct; and
- (g) generally prescribing conditions of service.

There is a proviso to this section, but it is unnecessary to extract the same for the purpose of these cases.

The preamble to the Standing Orders Act states:

Whereas it is expedient to require employers in industrial establishments to

define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

Section 1(3) provides that the Act applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months. There is a proviso to this sub-section which confers power on the appropriate Government to apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification, after giving not less than two months' notice of its intention so to do. This proviso has no relevancy to the present cases, because no such notification has been issued by the appropriate Government.

3. Section 2(b) defines appropriate Government as meaning, in respect of industrial establishments under the control of the Central Government or a Railway Administration or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government. The definition of industrial establishment in Section 2(e) is important and the same is as follows:

industrial establishment Means:

(i) an industrial establishment as defined in Clause (ii) of Section 2 of the Payment of Wages Act, 1936 (IV of 1936), or

(ii) a factory as defined in. Clause (m) of Section 2 of the Factories Act, 1948, or

(iii) a railway as defined in Clause (4) of Section 2 of the Indian Railways Act, 1890 (IX of 1890), or

(iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

One other term which has been defined and to which attention must be drawn is workman defined in Section 2(i) and the same is as follows:

"workman" means any person (including an apprentice) employed in any industrial establishment to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person:

(i) Who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957 or.

(ii) Who is employed in the police service or as an officer or other employee of a prison; or

(iii) Who is employed mainly in a managerial or administrative capacity; or.

(iv) Who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions, mainly

of a managerial nature.

The Standing Orders Act makes provision for an employer of an industrial establishment preparing a draft standing orders for the matters set out in the schedule to the Act and submitting the same for certification to the Certifying Officer and the Certifying Officer considering the same and certifying the same after hearing the employees' representatives and also provides for appeal against the orders of the Certifying Officers. There is also a provision for the duration of the Standing Orders so certified and modifications thereof. We are not referring to these provisions in detail since they are not material for the purpose of deciding these cases.

4. The only other section, which is relevant in this behalf, is Sub-section (1) of Section 12-A and the same is as follows:

Notwithstanding anything contained in Sections 3 to 12, for the period commencing on the dates on which this act becomes applicable to an industrial establishment and ending with the date on, which the standing orders as finally certified under this; Act come into operation u/s 7 in that establishment the prescribed model standing orders shall be deemed to be adopted in that establishment, And the provisions of Section 9. Sub-section (2) of Section 13 and Section 13-A shall apply to such, model standing orders as they apply to the Standing orders so certified.

5. Section 15(1) confers power on the appropriate Government to make rules and Clause (b) of Sub-section (2) thereof provides that such rules may set out model standing orders for the purpose of this Act.

6. As far as the definition of industrial establishment is concerned, we are thrown back to the definition of an industrial establishment as defined in the Payment of Wages Act, and a factory as defined in the Factories Act. The Payment of Wages Act, 1936 defines industrial establishment in Section 2(i) and enumerates several establishments therein. The enumerated item relevant for the purpose of these cases is item (g) which is as follows:

any establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of the water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.

Factory has been defined in Section 2(m) of the Factories Act, 1948 as follows:

Factory means any premises including the, precincts thereof:

(i) Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working or were working on any day of

the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a railway running shed.

Since this definition makes a reference to the manufacturing process, it is necessary to state how manufacturing process is defined in the Factories Act and that definition occurs in Section 2(k) which is as follows:

Manufacturing process, means any process for:

- (i) making, altering repairing, ornamenting, finishing packing oiling washing, cleaning breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal or.
- (ii) pumping oil, water or sewage, or
- (iii) generating, transforming or transmitting power or.
- (iv) composing types for printing, printing by letter press, Lithography photography or other similar process or book binding ;
- (v) Constructing, reconstructing, repairing refitting, finishing or breaking up ships or vessels.

It is with reference to these statutory provisions Kailasam, J., in the judgment appealed against in Writ Appeal No. 503 of 1967, had to consider the question posed by him. After referring to the definitions, the learned Judge observed:

The Coimbatore Municipality is a bulk consumer of electricity. They obtain energy from the State Electricity Board and transmit and distribute it. Any establishment in which any work relating to generation or relating transmission and. distribution of electricity is (sic) carried on would come under the definition. The plea of the learned Government Pleader that the work must relate to all the three namely, generation, transmission, and distribution of electricity, before it could come under the definition cannot be accepted for there is a comma after the word "generation" and giving it its natural meaning any work relating to generation or any work relating to transmission and distribution of electricity would come under the definition. The Electricity Department of the Municipality would fall under the definition in Clause (ii) of Section 2 of the Payment of Wages Act.

After referring to Section 2(m) of the Factories Act the learned Judge came to the conclusion that as the Municipality was engaged in the process of transmitting Electricity, it would also fall within the meaning of factory as defined in Section 2(m) of the Factories Act. In view of this, the learned Judge held:

As the establishment falls u/s 2(i) of the Payment of Wages Act 1936 and Section 2(m) of the Factories Act 1948 it is an industrial establishment within the meaning of Section 2(e) of the Industrial Employment (Standing Orders) Act.

Having come to this conclusion, the learned Judge then considered the question,

whether the provision of the Municipalities Act would prevail over the provisions of the Standing Orders Act. The conclusion of the learned Judge is that the Municipalities Act is a State general enactment dealing with the administration of Municipalities, whereas the Standing Orders Act is a special enactment relating exclusively to the service conditions of persons employed in industrial establishment and that the Standing Order. Act being a later special Act would prevail over the earlier general Act and the provisions in the Municipalities Act and the rule framed thereunder which are not in conformity with the Standing Orders Act and the model standing order will not apply. In view of the above inclusion, the learned Judge has held that the provisions of the Standing Orders Act and the model standing orders framed thereunder are applicable to the employees of the Electricity Department of the Coimbatore Municipality.

7. The questions for consideration are : (i) whether the conclusion of the learned Judge that the Electricity, Department of the Coimbatore Municipality, is an industrial establishment within the meaning of the Standing Orders Act is correct or not and (ii) if it is, such an industrial establishment, whether -the*, conclusion of the learned Judge that the Standing Orders Act prevails over the Municipalities Act and the reasons given by the learned Judge is correct or not?

8. As we have pointed out already, the writ appeal itself has become infructuous by efflux of time. But none-the-less these two questions have been argued before us in the other petitions and consequently we have to consider the correctness of the above conclusions.

9. With reference to the statutory provisions extracted above, one thing that has to be immediately noticed is that the expression establishment, has not been defined in any one of the above Acts. We called upon the learned Counsel appearing on both sides to bring to our notice any decision of any Court construing the expression establishment in general. The learned Counsel frankly conceded that they were not able to draw our attention to any such decision. Hence, we proceed on the basis that the expression establishment has to be construed according to the ordinary dictionary meaning in the context in which the same occurs in the statutory provisions extracted above. The meaning of the word, establishments given in the Shorter Oxford Dictionary appropriate to the context with which we are concerned is as follows:

Organised staff of employees or servants including or occasionally limited to the building in which they are located.

Webster's Third New. International Dictionary of the English language unabridged (1968 addition)defines establishment so far as appropriate to the context of the present cases as:

A more or less fixed and usually sizable place of business or residence together with all the things that are an essential part of it (as grounds, furniture, fixtures, retinue, employees).

Having regard to the term industrial establishment as defined in the Payment of Wages Act, 1936, and the term factory as defined-in the Factories Act, we are clearly of the opinion that the primary requisite for constituting an industrial establishment under the Standing Orders Act is a fixed place or site. The Supreme Court had to consider the definition of the term factory as defined in Section 2(12) of the Employees' State Insurance Act, 1948, which is substantially the same as the definition of the term factory in the Factories Act in Nagpur Electric Light and Power Company Limited v. Employees State Insurance Corporation (sic) II L.L.J. 40. With reference to that definition, the Supreme Court pointed out:

It seems to us a startling proposition that every inch of the wide area over which the transmission lines are spread is a factory within the meaning of Section 2(12).

A factory must, occupy a fixed site--see (sic) bury's Laws of England--3rd Edition, Vol. 17, Art. 15 P. 15

The company's factory has a fixed site. It is located inside the Kampai Road premises and Its boundaries are fixed by the compound wall of the premises.

Apart from this, the very language of the definition in the Payment of Wages Act, 1936, as well as in the Factories Act, 1948, indisputably leads to the conclusion that it is only a fixed place, either open or a building, which will constitute an establishment and therefore,-will become an industrial establishment, if the other requirements of the definition are satisfied. In the Payment of Wages Act, the definition is any establishment in which any work...is being carried on. In the Factories Act, the definition is, any premises including the precincts thereon whereon ten or more workers are working....The words italicised above clearly and unambiguously show that only a fixed place either open or a building, is denoted by the expression establishment occurring in these two definitions. This derives further support from Section 1(3) of the Standing Orders Act itself, because that uses the expression industrial establishment wherein one hundred or more workmen are employed. Consequently, before there can be any industrial establishment, there must be a fixed place either open or a building. Kailasam J. does not appear to have considered this question at all. The conclusion of the learned Judge simply was that the Electricity Department of the Coimbatore Municipality was an industrial establishment within the meaning of the Standing Orders Act. It is not clear what exactly the learned Judge intended to mean by using the expression, Electricity Department. The expression, Electricity Department need not necessarily refer to a specified place where the work relating to generation, transmission and distribution of electricity is carried on. The Electricity Department, may be a notional concept indicating the section of the Municipal office dealing with electricity distribution. Unless it is established that the Electricity Department connotes and "comprises of a fixed place, either open or a building, which satisfied the other requirements of the definition of the term industrial establishment as defined in the Payment of Wages Act or the

term, factory as defined in the Factories Act, it is not possible to hold that the Standing Orders Act applies to such a Department. This question was not, considered by Kailasam J. nor was it argued before us that the Electricity Department referred to in the judgment, which again occurs in several affidavits filed in support of the writ petitions either in the form of Electricity Department or Electrical undertaking of a Municipality is a fixed place, either- open or a building, where any work relating to generation, transmission and distribution of electricity is being carried on. Therefore on the face of it, we are unable to agree with the conclusion of the learned Judge that simply because the Municipality in the performance of its functions as such has in its office an Electricity Department, that Department would be an establishment, much less an industrial establishment coming within the scope of the Standing Orders Act.

10. We are also unable to agree with the learned Judge on the construction of the expression, generation, transmission and distribution of electricity occurring in Section 2(ii)(g) of the Payment of Wages Act. The learned Judge negated the contention put forward before him that unless the work relating to all the three functions are carried on in an establishment, the establishment would not become an industrial establishment within the scope of the Payment of Wages Act. With great respect to the learned Judge, we are unable to agree with his opinion. The expression is, work relating to the generation transmission and distribution of electricity. The word used between transmission and distribution is and not or. The learned Judge appears to have been influenced by the presence of a comma after the word generation and before the word transmission. As a matter of fact, the use of comma merely avoids a repetition of the word and in between generation and transmission. The learned Judge's construction will lead to the conclusion that the word and occurring between transmission and distribution should be read as or. It may be noticed that the very definition in another context uses a comma as well as or. We are referring to the opening part of the definition which says, any work relating to the construction, development or maintenance of buildings. Here again there is a comma between the words construction and development and there is the word or between the words development and maintenance. If the reasoning of the learned Judge is to be accepted, it will only lead to the inference that the Legislature has used the words and or indiscriminately. We are clearly of the opinion that the word or in the expression any work relating to the construction, development or maintenance of buildings has been deliberately used so as to bring within the scope of that definition any work relating to either the construction or development or maintenance of buildings. On the other hand, the word and has been deliberately used in the expression relating to the generation transmission and distribution of electricity so as to bring within the scope of that definition only the work relating to all the three functions cumulatively. Any interpretation which will lead to the conclusion that the Legislature has indiscriminately used the words and or without making any distinction whatever, has to be avoided, since the presumption is that the Legislature has used different words

deliberately with a view to denote and mean different things. From the context itself, there is nothing to compel the Court to read the word and occurring between the two words transmission and distribution as or only when the intendment of the Legislature is clear. It may be open to the Court to read and as or or or as and and having regard to the use of the words or and and separately in two different contexts in the same definition, we are unable to hold that the word and occurring between the words transmission and distribution should be read as or. The presence of the comma after the word generation and before the word transmission appear to have influenced the learned Judge to take the contrary view and he appears to have assumed that generation is dealt with separately and transmission and distribution have been dealt with together. We are clearly of the opinion that the very presence of the comma, which was used merely to avoid repetition of the word and in between the words generation and transmission leads to the irresistible conclusion that all the three functions must be cumulatively present before the said definition can be satisfied. On the other hand, the construction of the learned Judge introduces the word or in the place of the comma in between the words generation and transmission, since the, learned Judge points out:

There is a comma after the word generation and giving it its natural meaning, any work relating to generation or any work relating to transmission and distribution of electricity would come under the definition.

In ordinary usage "and" is conjunctive and "or" is disjunctive. But to carry out the intention of the Legislature it may be necessary to read "and" in place of conjunction "or" and vice verse. (Vide Maxwell on The Interpretation of Statutes--twelfth edition pp. 232--233)

We are not able to discover either from the scheme or from the various provisions of the Payment of Wages Act, 1935 any intention of the Legislature to compel us to read the word and as or between the expressions transmission and distribution.

11. The only argument that was advanced by Mr. A. Ramachandran, learned Counsel for the Respondent in Writ Appeal No. 503 of 1967 is that in defining the expression manufacturing process in Section 2(k) of the Factories Act, one of the items which appears in Section 2(k)(iii) is generating, transforming or transmitting power and since the factory as defined in the Factories Act also comes within the definition of industrial establishment in the Standing Orders Act we must construe the word and occurring between the words transmission and distribution in Section 2(ii)(g) of the Payment of Wages Act as or. We are unable to accept this argument for more than one reason. In the first place, the two definitions occur in two different statutes and therefore in view of the language contained in one statute, we cannot construe the language in the other statute, even though an industrial establishment as defined in the Payment of Wages Act and a factory as defined in the Factories Act are both brought within the scope of the Standing Orders Act. Secondly, in the expression extracted from the Factories

Act, the word distribution is absent and on the other hand in the expression extracted from the Payment of Wages Act, the word transformation is absent. Thirdly, the expression in the Factories Act refers to power, while the expression in the Payment of Wages Act refers to electricity or any other form of power. Fourthly, the manufacturing process as defined in Section 2(k) will have to be present, before any premises can become a factory as defined in Section 2(m) of the Factories Act. In addition to the, there are other restrictions in the form of the number of workers working thereon, before the premises can become a factory. Having regard to all these features we are unable to agree with the contention of Mr. Ramachandran that the word and occurring in between the words transmission and distribution in Section 2(h)(g) of the Payment of Wages Act should

12. Then, there remains the question whether the Electricity Department of the Coimbatore Municipality can be considered to be a factory under the Factories Act. No doubt, in defining manufacturing process in Section 2(k)(iii) the word or is used between the words transforming and transmitting. But that is not enough to make the Electricity Department of a Municipality a factory. As we have pointed out already, in the first place, there must be a premises. Secondly, before such premises in which the manufacturing process is being carried on can fall within the definition of factory as defined in the Factories Act, ten or more workers must be working or should have been working on any day of the preceding twelve months, if the manufacturing process is being carried on with the aid of power; and twenty or more workers should be working or should have been working on any day of the preceding twelve months, if the manufacturing process is being carried on without the aid of power. Therefore, there must be a finding as to the number of persons working on the premises before it can be held that the said premises is a factory within the definition of factory in the Factories Act and, therefore, it becomes an industrial establishment under the Standing Orders Act. Kailasam J. has not considered this aspect also.

13. In our opinion purely as a matter of construction of the various statutory provisions, the following features must be present before the Standing Orders Act can apply:

1. There must be a fixed site or place or a building which can be said to be an establishment;
2. In such an establishment, any work relating to the generation, transmission and distribution of electricity or any other form of power should be carried on, as far as the Payment of Wages Act, 1936 is concerned;
3. In any part of such premises manufacturing process as defined in Section 2(k) of the Factories Act, 1948, should be carried on; and on such premises ten or more workers must be working or must have been working on any day of the preceding twelve months, if the manufacturing process is being carried on with the aid of power and twenty or more workers must be working or must have

been working on any day of the preceding twelve months, if the manufacturing process is being carried on without the aid of power, if the definition of the term factory is to become an industrial establishment under the Standing Orders Act; and

4. Whether it is a factory as defined in the Factories Act, 1948, or an industrial establishment as defined in the Payment of Wages Act, 1936, in such an industrial establishment one hundred or more workmen must be employed or must have been employed on any day of the preceding twelve months, vide Section 8(8) of the Standing Orders Act.

14. These are facts to be established by affidavit or evidence and none of these facts was present in the case before Kailasam J., and consequently we have" no hesitation in holding that the conclusion of the learned Judge that the Standing Orders Act and the model standing order applied to the Electricity Department of the Coimbatore Municipality is not correct.

15. As we have already pointed out, the learned Judge has also referred to the Standing Orders Act prevailing over the Municipalities Act and we shall deal with that question in greater detail later in the course of the judgment,

16. Against the background of the conclusion recorded by us as above, let us now examine the case of the Petitioners in the various writ petitions. We may immediately point out that none of the affidavits filed in support of any of these writ petitions gives specific and definite particulars to bring the case of the Petitioners within the scope of the Standing Order Act, except for making bald assertions that the entire Municipality or any particular department of the Municipality is an industrial establishment as contemplated by the Standing Orders Act and the respective Petitioners are workers therein. When we drew the attention of the learned Counsel for the Petitioners to this feature, the learned Counsel simply contended that since under the Municipality, an employee in one department, is transferable to any other department, the Petitioners had put forward such a contention that we should not take a technical view of the same. We are unable to agree. Once it is conceded that the Petitioners are the employees of the different Municipalities and under the rules framed under the Municipalities Act, their age of retirement has been fixed as 55 years, if they want to contend that notwithstanding such a position, some other statutory provision is applicable to them, it is for them to allege necessary facts to attract the applicability of the other statutory provision. We may point out here itself that in all cases relating to the Electricity Department of a Municipality, it is the common case that the Municipality does not generate electricity and that it buys electricity in bulk from the Government and the State Electricity Board and distributes the same to the citizens, in addition to using it for its own purposes.

17. The Petitioner in Writ Petition No. 893 of 1967, joined the Madurai Municipal Council as a clerk in 1933; from 1933 he had been mostly serving in the Electricity Department of the Municipality; and from 1947 till his retirement, he

was continuously working in the Electricity Department as an Electricity Accountant. His contention in the affidavit is that the Electricity Department of the Respondent-Municipality is an industrial establishment u/s 2(e)(i) of the Standing Orders Act, as it is- an establishment engaged in the transmission and distribution of electricity.

18. The Petitioner in Writ Petition No. 1814 of 1967 stated in his affidavit that he was recruited as an electrician by the Government of Madras in 1934 that in 1937 his post was transferred to Coimbatore Municipality and ever since then he had been working in the Electricity undertaking of the said Municipality . and that on the date of he filing of the writ petition he was holding the post of Special Grade Supervisor, He also contends that the Electricity undertaking of the Municipality is engaged in the transmission and distribution of electricity and is, therefore, an industrial establishment within the meaning of the Standing Orders Act.

19. the Petitioner in Writ Petition No. 2556 of 1987 states in his affidavit that he was employed as wireman in the Electricity Department of Pollachi Municipality and that the Municipality and in particular the Electricity Department of the Municipality is an industrial establishment within the meaning of Section (2)(e)(i) of the Standing Orders Act.

20. The Petitioner in Writ Petition No. 3300 of 1967, states that he joined the Madurai Municipality as a lower division clerk in 1936; that in 1943 he was promoted as an Electrical Store-keeper; that in 1962 he was transferred as Electrical Licence clerk on administrative grounds; that in 1963 he was posted as Head Clerk in the general branch of the Municipality, that in 1966 he was posted as an assessor and that he was continuing as such at the time of the filing of the writ petition. According to him, since the Respondent-Municipality is engaged in transmission and distribution of electricity, it would be an industry a establishment as defined in the Standing Orders Act.

21. The Petitioner in Writ Petition No. 2151 of 1970 was working as a lower division clerk in the Electricity Department of the Coimbatore Municipality and according to him the Municipality itself is an industrial establishment u/s 2(e) of the Standing Orders Act, as it is engaged in transmission and distribution of electricity. He also contends that the Electricity Department of the first Respondent-Municipality is an integral part of the Municipality and all the employees working under the first Respondent-Municipality are entitled to the protection of the Standing Orders Act.

22. The Petitioner in Writ Petition No. 3548 of 1970, was working as an electrician in the Civil Engineering Department of the Coimbatore Municipality and according to him, he was engaged in the work relating to supply of water to the residents of that Municipality. He states that the Respondent-Municipality and in particular the Civil Engineering Department in which he was employed is an establishment as defined in Section 2(e) of the Standing Orders Act, as the

establishment is engaged in the operation relating to supply of water; and that the Respondent-Municipality and in particular the Civil Engineering Department would be establishment covered by the Act. He goes further and states that the employees employed under the Municipality would form one industrial establishment as defined in Section 2(e) of the Standing Orders Act and the workmen employed would be entitled to continue upto 58 years as per the model Standing Order 21 framed under the said Act,

23. The Petitioner in Writ Petition No. 4247 of 1970, entered service of the Coimbatore Municipality in 1933. He had worked in various departments in different capacities for different periods and at the time of the filing of the writ petition, he was working as Manager in the General Branch of the Municipality. According to him, since the Municipality is engaged in work relating to construction, development and maintenance of buildings, roads, bridges, water-supply drainage, electricity supply, etc., it is an industrial establishment as defined in Section 2(e) of the Standing Orders Act. He also contends that since the various departments are controlled by the Municipal Council and the employees are transferable from one branch to another, there is unity of management, ownership and control and functional integrality between various Departments of the Municipality; that the Municipality constitutes one single undertaking and that the Respondent-Municipality as a whole is an industrial establishment as defined in the Standing Orders Act.

24. The Petitioner in Writ Petition No. 399 of 1971 states that he was last employed as a lower division clerk in the Coimbatore Municipality and he joined the Coimbatore Municipality in 1938; that he had worked in various departments of the Municipality, such as markets section, house fox department, Town-planning section, encroachment section and also Electricity Department, that he was last working in the Taxation Department; and that since an employee of the Municipality is liable to be transferred from one Department to another depending upon the exigencies of service, the entire Municipality is in industrial establishment as defined in the Standing orders Act.

He also refers to the functional integrality, unity of management, ownership and control in support of his contention that the entire Municipality is a single industrial establishment.

25. The Petitioner in Writ Petition No. 419 of 1971 was employed as a water works fitter in the Civil Engineering Department of the Coimbatore Municipality. He stated that as water works fitter, his works related to the supply of water to the residents of the Municipality and as such the Respondent-Municipality and in particular the Civil Engineering Department in which he was employed is an industrial establishment as defined in Section 2(e) of the Standing Orders Act.

26. The Petitioner in Writ Petition No. 610 of 1971, was last employed as a Town Planning Officer, Grade II, in Tiruppur Municipality. He states that he is a Licentiate in Civil Engineering with practical knowledge in the construction of

buildings; that his work as Town Planning Officer was mainly technical in nature and as Town Planning Officer, he had to prepare plans for the development of the town in accordance with the provisions of the Town Planning Act and send them to... the Director of Town Planning for approval; and that after sanction by the Government he had to carry out the schemes according to the sanctioned plans. He further states that he had also to scrutinise the plans and applications for building constructions and installation of machinery and put them up for approval by the Commissioner of ^ the Municipality; that he had to attend to the acquisition and alienation proceedings relating to the lands required by the Municipality and work connected with the Municipality acquiring land under the provisions of the Town Planning Act and developing them as house-sites and selling them to parties. He further states that the Municipality also constructs shops and bunks and leases them out and he attends to the work connected with this also. He finally states that the Respondent-Municipality is an establishment as defined in Section 2(e) and Section 2(e)(i) of the Standing Orders Act.

27. The Petitioner in Writ Petition No. 1178 of 1971, states that he was working as a Line Inspector, Grade II, in the Electricity Department of Pollachi Municipality and he joined the Electricity Department of that Municipality as a wireman in-1943. He further states that the Respondent-Municipality is an industrial establishment as defined in Section 2(e) and (i) and Section 2(e)(ii) of the Standing Orders Act.

28. The Petitioner in Writ Petition No. 2250 of 1971, entered service of the Coimbatore Municipality in 1942, as Vaccinator and had worked in different capacities for different periods and had worked as Cholera Inspector, Plague Inspector and Sanitary Inspector in charge of manufacture and distribution of compost manure. At the time of the filing of the Writ Petition he was working as Sanitary Inspector. According to him, the Municipality is an industrial establishment as defined in the Standing Orders Act, as it carries on most of the activities mentioned in Sub-clause (g) of Sub-section (ii) of Section 2 of the Payment of Wages Act and satisfies the definition of factory in Section 2(m) of the Factories Act.

29. The petition in Writ Petition No. 2341 of 1971, states that he joined the Coimbatore Municipality originally as a Bill Collector in the Revenue Branch that later he worked as Bill Collector for more than six months in the Electricity Department; that he was promoted as Revenue Inspector and latter as Licence Inspector; and that at the time of the filing of the writ petition, he was working as Licence Inspector in the Revenue Department of the Municipality. He further states that the employees of the Municipality are liable to be transferred from one department to another and that the entire Municipality would be an industrial establishment as defined in the Standing Orders Act.

30. The Petitioner in Writ Petition No. 2492 of 1971 states that, he entered service of the Coimbatore Municipality in 1937; that he had worked in various departments in different capacities for different periods and that at the time of

the filing of the writ petition, he was working as Sanitary Inspector, Public Health Branch of the Municipality, drawing a basic salary of Rs. 350 and a dearness allowance of Rs. 30 totalling Rs. 380. According to him, the Municipality is engaged in work relating to the construction" development and maintenance of buildings, roads" bridges, water-supply, conservancy, etc. and, therefore it is an industrial establishment as defined in Section 2(e) of the Standing Orders Act. He further points out that the General Branch, Electricity, Water supply, Drainage, Health, Revenue and Town Planning branches of the Municipality are under the Municipal Council and the Municipality is the. employer of the workmen employed therein; that the employees are transferable from one branch to another; that the income and expenditure are taken to a common fund; that consequently there is unity of management, ownership and control and functional integrality between various Departments of the Municipality and that therefore, the Municipality constitutes one single undertaking and as a whole it is an industrial establishment as defined in the Standing Orders Act, since it carries on most of the activities mentioned in Sub-clause (g) of Sub-section (ii) of Section 2 of the Payment of Wages Act and also satisfies the definition of factory in Section 2(m) of the Factories Act.

31. The Petitioner in Writ Petition No. 1297 of 1972, entered service of Coimbatore Municipality in 1939 as a temporary Civil attender and in 1940 he was appointed as maistry in Civil Engineer's office of the Municipality; and from 5th April 1940, he was appointed as Bill Collector in the Municipality which post he was holding on the date of the filing of the writ petition. According to him, the employees working in the Municipality are transferable from one department to another as per the service rules and the entire Municipality is one establishment.

32. The Petitioner in Writ Petition No. 1300 of 1972, states that he entered service of the Coimbatore Municipality as Bill Collector and that he was still continuing as Bill collector. According to him, the Respondent-Municipality is an industrial establishment as defined in the Standing Orders Act.

33. The Petitioner in Writ petition No. 1952 of 1872, was working as Sanitary Inspector in (sic)-chirappalli Municipality. According to him, that Municipality is an industrial establishment as defined in the Standing Orders Act and the entire Municipality is one establishment.

34. The Petitioner in Writ Petition No. 1548 of 1972, was working as Revenue Officer in Ootacamund Municipality. He originally joined the Municipal Service as a lower division clerk in November 1937; he worked in various departments of the Municipality like the Taxation Department, General Department, Electricity Department, Health Department and Engineering Department. According to him, the Municipality is one integrated whole and the entire Municipality is an industrial establishment as defined in Section 2(e)(i) and Section 2(e)(ii) of the Standing Orders Act. In his affidavit, he makes an additional point, namely, that the teachers employed in this very Municipality are retired only on attaining 58 years of age, whereas the other Municipal employees are being retired on their

attaining 55 years of age and the same is discriminatory and unjust and is in violation of Articles 14 and 16 of the Constitution of India.

35. The Petitioner in Writ Petition No. 1635 of 1972, was a Maternity Assistant of the Coimbatore Municipality and her case is that she was a work man as defined in Section 2(i) of the Standing Orders Act and that the Respondent--Municipality is an industrial establishment as defined in Section 2(e)(i) and Section 2(e)(ii) of the said Act.

36. The Petitioner in Writ Petition No. 1665 of 1972 was working as Head Clerk in the Revenue Department of the Coimbatore Municipality and he joined the Municipality as clerk in May 1945. He worked in various departments including Engineering Department, Electricity Department, Town Planning section, Health section and General Department. According to him, the entire Municipality is an industrial establishment coming within the Standing Orders Act. He also complains that the teachers in the Municipal service are retired only at the age of 58, while the other employees are compelled to retire at the age of 55 and that constitutes arbitrary discrimination and is violative of Articles 14 and 16 of the Constitution, of India,

37. The Petitioner in Writ Petition No. 1797 of 1972, joined the Coimbatore Municipality in 1944 as Tap Inspector in the Water Supply and Engineering Department and he had been continuing as such. Section 6(1) of the Municipalities Act states that the municipal authorities charged with carrying out the provisions of this Act are (a) a council; (b) a chairman; and (c) an executive authority; Sub-section (2) of Section 6 is:

The Municipal Council shall by the name of the Municipality be a body corporate, shall have perpetual succession and 1 a common seal and subject to any restriction or qualification imposed by this or any other enactment shall be vetoed with the capacity of suing or being sued in its corporate name, of acquitting, holding and transferring property movable or immovable, or entering into contracts and of doing all things necessary for the purpose of its constitution.

From the language of Section 4 of the Municipalities Act, it will be seen that a municipality is a town, village, hamlet, bazaar, station or other local area or any group of the same. In view of this, the contention of the Petitioners that the entire Municipality is an industrial establishment is ununderstandable and incomprehensible. Equally ununderstandable is the contention that a particular department of a Municipality is an industrial establishment. As we have pointed out already for the sake of effective administration of its affairs, the municipal authorities divide their official work into different branches and departments, each branch or department dealing with a particular function or work. Simply because municipal office comprises of different branch he contends that the Respondent Municipality is an industrial establishment as defined in Section 2(e) (i) and (ii) of the Standing Orders Act.

38. Thus, it will be seen that none of the Petitioners in their respective affidavits

has made out a case for the applicability of the Standing Orders Act in the sense in which we have explained above. The Petitioners contends that either the entire municipality is an industrial establishment coming within the scope of the Standing Orders Act or particular department of a Municipality is an industrial establishment. As far as the contention that the Municipality itself is an industrial establishment is concerned, it has no meaning. The expression Municipality is a common expression to denote the corporate personality of the Municipal Council constituted under the Municipalities Act. Section 4(1) of the Municipalities Act states:

The State Government may by notification declare their intention:

(a) to constitute as a Municipality and town, village, hamlet, bazaar, station or other local area or any group of the same in the immediate neighbourhood of one another; or

(a) to exclude from a Municipality any local area comprised there in and defined in such notification; or

(b) to include within a Municipality any local area in the vicinity thereof and defined in such notification.

or departments, it cannot be said that any such branch or department constitutes an industrial establishment. As we have pointed out already, there must be a definite or fixed place, either open or a building, in which the activities referred to in Section 2(ii)(g) of the Payment of Wages Act, 1936, or Section 2(m) of the Factories Act must be carried on. There is absolutely no averment in any of the affidavits that there is any particular place which will constitute an establishment in which the activities referred to in the respective sections are being carried on so as to attract the applicability of the Standing Orders Act. Apart from this, there is no averment whatever in any of the affidavits filed in support of these writ Petitioners that there is an establishment in the sense in which we have explained and that in such an establishment one hundred or more workers are employed or were being employed, as contemplated by Section 1(3) of the Standing Orders Act so as to make the Standing Orders Act applicable. With regard to the Electricity Department or Electricity undertaking of the Municipalities, we have already pointed out that none of the Municipalities involved in these writ Petitioners generates electricity and so long as there is no work relating to generation of electricity, there cannot be an industrial establishment, for, to constitute an "Industrial establishment" u/s 2(ii)(g) of the Payment of Wages Act, 1936, work relating to all the three functions, namely, generation, transmission and distribution must be arrived on in the establishment. Similarly with regard to Civil Engineering Department and Water Supply department referred to in one or two writ petitions, there is no averment that there is an establishment in the sense in which we have explained and that in such an establishment any work relating to the construction, development or maintenance of buildings, roads, bridges or canals or any work relating to

operation connected with the supply of water is being carried on. As a matter of fact, it is difficult to see how the Petitioner in Writ Petition No. 1635 of 1972, who is a Maternity Assistant can ever claim to be working in an industrial establishment as defined in the Acts referred to above.

39. We may mention one other feature also. In almost every one on these writ petitions, the respective Petitioners had contended that under the Munich polities, they are transferable from one department to another and that as a matter of fact during their career they had been actually transferred from one branch to another. From this fact, a question may possibly arise, namely whether to such a situation the particular standing order relating to the age of retirement can ever be applied at all. Thai contention is that when the entire Municipality is an industrial establishment, the age of retirement should be the same, as provided in the model Standing Order No. 21, to all the employees of the Municipality irrespective of the branches in which they happen to work. We have already rejected the contention that) he entire Municipality is an industrial establishment. Even of it is possible to hold that some department of the Municipality is an industrial establishment, a question will arise; Is the age of retirement to depend upon the particular department in which an employee is working on the eve of his retirement ? For instance, if the Electricity department alone is held to be an industrial establishment, in the event of a clerk working in the general branch being transferred to the Electricity Department at the age of 54, since the employees of the Municipality are transferable from one branch or Department to another, his age of superannuation would become 58 under the model Standing Order No. 21, while it would be 55 if he had continued in the general branch. At the same time, the other clerks who had not been so transferred would have to retire at the age of 55. Similarly if a clerk working in the Electricity Department is transferred to the General branch at the age of 54, he will have to retire on his attaining the age of 55; but if he had continued t remain in the Electricity Department he would retire only on his attainment of 58 years. Thus, the result would be that the actual age of superannuation is not definite and fixed and is dependent upon whether a particular employee is working in one department or the other at about the age of 55. Certainly such an anomalous position cannot be contemplated or countenanced. This emphasises the position that an industrial establishment coming within the scope of the Standing Orders Act will not include different administrative branches of an organisation which itself is not an industrial establishment. To constitute an industrial establishment for the purpose of the Standing Orders Act, there must an establishment in which a certain number of workmen are working with some degree of permanency without their being liable to be transferred by the employer to some other establishment which is not an industrial establishment within the scope of the Standing Orders Act. We may also take note of the fact that these departments can always be reorganised by a Municipality by disannexing certain functions attached to one department and annex the same to another department or reducing the number of departments or increasing the

number of departments and redistributing the functions attachable to such departments. No employee will have right to insist that no such thing can be done by a Municipality and that he must be continued to be attached to a particular department only so as to enable him to claim that that department is an industrial establishment and therefore the Standing Orders Act applies to the same. Apart from the strictly statutory construction to which we have already made reference, there are some of the considerations which influenced us to hold that none of the departments of the Municipalities considered in these writ petitions, which are purely department arranged for the convenient discharge of the duties of the Municipalities can never be said to be an industrial establishment.

40. Having regard to the manner in which we have considered the statutory provisions and also the allegations in the affidavits to which we have made reference, we are clearly of the opinion that none of the Petitioners has made out the case that the provisions of the Standing Orders Act are applicable to him and that he is entitled to continue in service till he attains the age of 68. In most of these cases, the Municipalities concerned have just informed the respective Petitioners that they would have to retire on a particular day on which they would attain the age of superannuation and hand over charge. It is to quash these notices that the writ petition* have been filed. In one case, the employee has already been retired and has been asked to hand over charge and it is to quash that order, he has filed the writ petition.

41. For the reasons mentioned above, none of these Petitioners is entitled to succeed. As we have pointed out already, Writ Appeal No. 503 of 1967, has become infructuous by efflux of time. Similarly Writ Petition Nos. 893 1814 and 2556 of 1967, have become infructuous, since on the admission of the writ petitions, under orders of stay the Petitioners therein had continued in service till they attained the age of 58. On the above ground, the writ appeal and the writ petitions mentioned above are liable to be dismissed. The other writ petitions are also liable to be dismissed for the reasons mentioned above.

42. The reasons indicated by us above are sufficient to dispose of these cases. However, as we have held that on our construction of the various statutory provisions and on the pleadings, the Petitioners have not made out their case that the Standing Orders Act is applicable to them, both the sides invited us to go into a general question, namely, whether the Standing Orders Act can be applied to the Municipal employees at all and whether the Standing Orders Act prevails over the Municipalities Act, as held by Kailasam J., on the assumption that the pleadings contained necessary averments. It is in view of this, we propose to consider the said questions also.

43. We have already pointed out that Kailasam J., has taken the view that the Standing Orders Act being a later special Act would prevail over the earlier general Act and the provisions of the Municipalities Act and the rules framed thereunder which are not in conformity with the Standing Orders Act and the

model standing orders will not apply. We shall have to consider the correctness of this conclusion of the learned Judge. Apart from this, the principal argument advanced by the learned Counsel for the Petitioners, namely, Mr. A. Ramachandran is that by virtue of Section 107 of the Government of India Act, 1935 corresponding to Article 254 of the Constitution of India the provisions contained in the Municipalities Act will have to give way to the provisions of the Standing Orders Act and the model standing orders. In one or two affidavits filed in support of these writ petitions, there is a reference to Article 254 of the Constitution of India and Mr. Ramachandran frankly conceded that it was a mistake and the real provision is Section 107 of the Government of India Act. Before us, there was no controversy with regard to the competency of the respective Legislatures which passed the two enactments. The Municipalities Act 1920, was passed by the then Legislative Council of Madras, functioning under the Government of India Act, 1919, and therefore there was no question of the said Act, at the time when it was passed, being related to any particular Legislative Entry as contained in the Seventh Schedule to the Constitution of India, or as was contained in the Government of India Act, 1935. That Act is an existing Indian law as defined in Section 311 of the Government of India Act, 1935. According to the section, the expression, existing Indian Law means:

Any law ordinance order byelaw rule or regulation passed or made before the commencement of part III of this Act by any legislature authority or person in any territories for the time being comprised in British India being legislative authority or person having power to make such a law, ordinance, order byelaw rule or regulation

There was no controversy before us that under the Government of India Act, 1919, the Legislative Council of Madras Presidency was competent to enact the Municipalities Act referred to above and consequently that is an existing Indian law as defined in Section 311 of the Government of India Act, 1935. Such an existing law had been continued and in view of that continuance, it had to be correlated to some entry in the Seventh Schedule to the Government of India Act, 1935, which has been substantially reproduced in the Seventh Schedule to the Constitution of India. Entry No. 13 of List II of the Seventh Schedule to the Government of India Act is as follows:

Local Government that is to say the constitution and powers of municipal Corporations "improve, merit trusts" district boards "mining settlement authorities and other local authorities for the purpose of local self Government or Village Administration".

This entry corresponds to entry No. 5 of List II of the Seventh Schedule to the Constitution of India. Therefore, the Municipalities Act is a law with respect to this entry, which the Legislative Council of Madras Presidency was competent to make, who: it was enacted" and the Legislature of Tamil Nadu is now competent to make. Similarly, the Standing Orders Act which is of the year 1946 and which was passed by the Central Legislature, after the coming into force of the

Government of India Act, 1936, in with respect to Entry No. 27 of List III of the Seventh Schedule to the Government of India Act 1935 which is as follows:

Welfare of Labour; conditions of labour provident funds employers' liability and workmen's compensation health insurance, including invalidity pensions old age pensions.

This Entry substantially corresponds to Entry No. 24 of List III of the Seventh Schedule to the Constitution of India though the language of the two Entries is not identical. It is well settled that in an enquiry whether an enactment is ultra vires of the Legislature which made it, the Court must ascertain the true nature and character of the challenged enactment and its pith and substance. The AIR 1941 47 (Federal Court) Muthuswami Goundan observed:

It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its pith and substance, or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that.

The Privy Council in *Prafulla Kumar Mukherjee v. Bank of Commerce Limited* 74 I.A. 23 Khulna extracted the above passage of the Federal Court and expressed its agreement with the said passage stating that the said passage correctly described the grounds on which the rule was founded and that it applied to Indian as well as to Dominion legislation. It is equally well settled that the provisions of the Constitution should not be cut down to a narrow and technical construction, but considering the magnitude of the subjects with which they purport to deal in a very few words, they should be given a large and liberal interpretation so that the Central Legislature to a great extent but within certain fixed limits, may be mistress in her own house as the State Legislatures to a great extent but again within certain fixed limits, are mistresses in theirs. As pointed out by the Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*,

The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate Legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entries.

Hence, the Entries in the Lists should be given a large and liberal interpretation, the reason being that the allocation of the subjects in the Lists is not by way of scientific definition but by way of a mere simplex enumeration of particular categories

44. The Federal Court in AIR 1941 16 (Federal Court) has stated.

The subjects dealt with in the three legislative lists are not always set out with scientific definition. It would be practically impossible for example to define each item in the Provincial List in such a way as to make it exclusive of every other item in that list, and Parliament (of the United Kingdom) seems to have been content to take a number of comprehensive categories, and to describe each of them by a word of broad and general import. In the case of some of these categories, such as "Local Government" Education Water Agriculture and "Land" the general word is amplified and explained by a number of examples or illustrations, some of which would probably on any construction have been held to fall under the more general word, while the inclusion of others might not be so obvious. Thus "Courts of Wards" and treasure-trove might not "land" ordinarily have been regarded as included under if they had not been specifically mentioned in item 21. I think however that none of the items in the lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.

The said principle has been approved by the Supreme Court in the State of Bombay v. F.N. Balsara AIR 1951 S.C. 318 Again, it is equally well settled, that every Legislature must have certain incidental and ancillary powers to make sure that the legislation with respect to enumerated powers may be effective. The Supreme Court in The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, stated:

It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power.

Consequently, when the Municipalities Act was enacted with respect to local Government, certainly the Legislature had power to provide for all incidental and ancillary matters, for the purpose of effectively legislating with reference to the said power. Since there cannot be a local Government without officers functioning thereunder, the Municipalities Act validly made provision for conditions of service of the employees of the Municipal Councils and therefore the rules framed by the local Government in exercise of the powers conferred u/s 74 of the Municipalities Act were validly made and they applied to the municipal employees including the Petitioners herein. Mr. A. Ramachandran, learned Counsel for the Petitioners, did not dispute the correctness or validity of any one of these positions. However, his argument, as we have pointed out already, is that by virtue of the operation of Section 107(1) of the Government of India Act, 1935, there is repugnancy between the rules made under the Municipalities Act which is a provincial legislation and the model standing orders made under the Standing Orders Act, which is a central legislation and "therefore" the rules made under the provincial law yield to the rule made under the Central enactment. In other words, the model standing order must prevail over the rules made by the Provincial Government. We are clearly of the opinion that there is

no validity in this argument. Section 107(1) of the Government of India Act, 1935, which alone is relevant is as follows:

If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section the Federal law, whether passed before or after the Provincial law, or as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

In the first place, the Municipalities Act cannot be said to be a Provincial law, as contemplated by Section 107(1) extracted above. What is meant by provincial law is defined in Section 311 of that Act itself- According to that definition, Provincial law means, a law made by the Provincial, Legislature established under that Act, namely the Government of India Act, 1935. The Municipalities Act 1920, not being an Act or law made by a Provincial Legislature established under the Government of India Act, 1935, it will not fall within the scope of the expression Provincial Law occurring in Section 107(1) of the Government of India Act, 1935. Therefore, it cannot be contended that there is repugnancy between Provincial law and federal law as contemplated by Section 107(1) of the Government of India Act, 1935 so as to attract the applicability of that section. This conclusion flows directly from the language of Section 107(1) as well as the definition of the term provincial law or Provincial Act, occurring in Section 311 of the Government of India Act, 1936. As a matter of fact a Full Bench of the Orissa High Court in *Rama Chandra Misra. v. President, District Board, Ganjam* AIR 1951 Ori 2 (F.B.) has also taken the same view. The Orissa High Court. was considering the alleged repugnancy between the Madras Local Boards Act, 1920 and the Motor Vehicles Act, 1939 passed by the Central Legislature after the coming into force of the Government of India Act, 1935. The second reason for holding that Section 107 of Government of India Act has no application to the present cases is that section will apply only when the Provincial Law and the Federal Law or the existing law is with respect to one of the matters enumerated in the concurrent list.

45. The Privy Council in *Megh Raj v. Allah Rakhia* 74 I.A. 12 had to consider the question with reference to the Punjab Restitution of Mortgaged Lands Act (Punjab Act IV of 1938). That Act had the main purpose of giving relief to mortgagors to enable them to obtain restitution of the mortgaged lands on terms less onerous than the mortgage deeds required. It was contended on the one hand that that Act was with respect to Entry No. 21 of the Provincial List dealing with Land and the opposite contention was that it fell within Entries Nos. 7, 8 and 10 of the Concurrent List and consequently Section 107 of the Government of India Act, 1935 came into operation. The Privy Council pointed out that the Act as a whole fell within the powers given to the Province by items 2 and 21 of the List II, without any necessity to invoke any powers from the Concurrent List, List III and

accordingly questions of repugnancy u/s 107 of the Government of India Act, 1935 did not arise thereby implying that Section 107 would be attracted only when both the laws were made with respect to a matter enumerated in the Concurrent List.

46. The Federal Court in *Lakshmi Narayan Das v. The Province of Bihar* AIR 1950 FC 59 pointed out that to attract the operation of Section 107 read with Section 88(1) of the Government of India Act, 1935, it had to be established that the provisions of the Ordinance impugned in that case and those of an existing law must be in respect of the same subject matter and that subject matter must be governed by one of the items in the Concurrent List. This conclusion of the Federal Court was approved by the Supreme Court in *A.S. Krishna Vs. State of Madras*, . After extracting Section 107 of the Government of India Act, 1935, the Supreme Court pointed out:

For this section to apply, two conditions must be fulfilled : (1) The provisions of the Provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the concurrent list, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the Provincial law will, to the extent of the repugnancy, become void.

In the present case, the Municipalities Act, not being a law with respect to a matter enumerated in the Concurrent List, Section 107 of the Government of the India Act, 1935 cannot be invoked, For those reasons, we hold that the contention of the learned Counsel for the Petitioners that by virtue of Section 107 of the Government of India Act, 1935 the provisions of the Standing Orders Act and the Model Standing Orders should prevail over the Municipalities Act and the rules made thereunder fails.

47. Once Section 107 of the Government of India Act, 1936 corresponding to Article 254 of the Constitution of India is out of the way no other principle was brought to our notice to exclude the applicability of the rules framed by the Provincial Government u/s 74 of the Municipalities Act to the municipal employees and to apply to them the provisions contained in the Standing Orders Act or the Model Standing Orders. It is no doubt true that Article 246 of the Constitution of India corresponding to Section 100 of the Government of India Act, 1935 secured the predominance or supremacy of the Central Legislature in case of overlapping between Lists. I, II and III of the seventh schedule. Further it has- been held by the Supreme Court in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, .

Article 246, Clauses (1) and (3) have to be invoked only if there is a conflict as to the scope of the entries in the two Lists and not otherwise.

Therefore, if an enactment according to its pith and substance clearly falls under any of the matters assigned to the State Legislature it is valid notwithstanding its incidental encroachment on a Union subject. In this connection it is relevant to refer to *Prafulla Kumar Mukherjee v. Bank of Commerce Limited* 74 I.A.

2S. The contention before the Privy Council was that in India the difficulty in dividing the powers had been foreseen; accordingly three Lists had been prepared in order to cover the whole field and these Lists had a definite order of priority attributed to them so that anything contained in List I was reserved solely for the Federal Legislature and however incidentally it might be touched on in an Act of the Provincial Legislature that Act was ultra virus in whole or at any rate where in any place it affected an Entry in the Federal List; and similarly any item in the Concurrent List if dealt with by the Federal Legislature was outside the power of the provinces and it was only the matters specifically mentioned in List II over which the Province had complete jurisdiction although so long as any item in the Concurrent List had not been dealt with by the Federal Legislature the Provincial Legislation was binding. Dealing with this argument the Privy Council observed:

To take such a view is to simplify unduly the task of distinguishing between the powers of divided jurisdiction. It is not possible to make so clean a cut between the powers of the various legislatures; they are bound to overlap from time to time. Moreover, the British Parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted to the several legislatures will never overlap.

No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which List particular provisions should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three Lists for two, or even by an aging for a hierarchy of jurisdictions. Subjects must still overlap, and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what List is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with.

Thirdly, the extent of the invasion by the Provinces into subjects enumerated in the Federal List has to be considered. No doubt it is an important matter, not, as their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act, its provisions may advance so far into Federal Territory as to show that its true nature is not concerned with provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money-lending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can

be seen as valid or invalid according to its true content. This view places the precedence accorded to the three lists in its proper perspective.

No doubt where they come in conflict List I has priority over Lists III and II and List III has priority over List II, but the question still remains, priority in what respect Does the priority of the Federal Legislature prevent the provincial legislature from dealing with any matter which may incidentally affect any item in its list, or in each case has one to consider what the substance of an Act is and, whatever its ancillary effect, attribute it to the appropriate list according to its true character ? In their Lordships opinion the latter is the true view.

48. Sir maurice Gwybr C.J. in AIR 1939 1 (Federal Court) stated:

It is a fundamental assumption that the legislative powers of the Centre and Provinces could not have been intended to be in conflict with one another and therefore we must read them together and interpret or modify the language in which one is expressed by the language of the other

Jayakar J. in the same decision stated:

Even where there has been an endeavour to give pre-dominance to the Central Legislature in cases of a conflict of powers, it is obvious that, in some cases where this apparent conflict exists the Legislature could not have intended that powers exclusively assigned to the Provincial Legislature should be absorbed in those given to the Central Legislature.

It is the duty of the courts however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects (mentioned in the Central and Provincial Lists) exists in each Legislature and to define, in the particular case before them, the limit* of their respective powers. It could not have been the intention that a conflict should exist, and, in order to prevent such a result, the two sections must be read together, and the language of one interpreted and, where necessary, modified by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections so as to reconcile the respective powers they contain and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand : See Citizens Insurance Co. v. Parsons (1882) 7 A.C. 96.

The Privy Council in Governor General in Council v. Province of Madras 72 F.A. 91 had to consider the competency of the Madras Legislature to enact the Madras General Sates Tax Act 1939. After referring to the provisions of Section 100 of the Government of India Act 1935, the Judicial Committee observed:

Their Lordships do not doubt that the effect of these words is that, if the legislative powers of the Federal and Provincial legislatures, which are

enumerated in List I and List II of the seventh schedule, cannot fairly be reconciled, the latter must give way to the former. But it appears to them that it is right first to consider whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning which, if less wide than it might in another context bear, the one that can properly be given to it, and equally giving to the language of the Provincial Legislative List a meaning which it can properly bear.

49. In *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, already referred to, it was contended that the Entries in the legislative lists, must be considered broadly and not narrowly or in a pedantic manner and that in accordance with this principle, Entry 42 of List I, namely, inter State Trade and Commerce should be construed, there being no limitation contained therein, as inclusive of the power to tax Sales in inter State trade and commerce to the exclusion of the power of the State Legislature to levy sales tax under Entry 54 of List II. In reconciling Entry 42 of List I with Entry 54 of List II, the Supreme Court held that Entry 42 in List I should not be interpreted as including taxation. This conclusion of the Supreme Court was independent of its other conclusion in that decision that the power of taxation has been conferred on the Legislatures in separate and independent Entries.

50. The Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, had to consider the scope of Entries 7 and 52 in List I, Entries 24, 25, 26 and 27 in List II of the seventh schedule to the constitution of India* These Entries are:

List I--Union List.

Entry 7 : Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

Entry 52 : Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

List II--State List.

Entry 24 : Industries subject to the provisions of Entries--7 and 52 of List I.

Entry 25 : Gas and gas works.

Entry 26 : Trade and commerce within the State subject to the provisions of entry 33 of List III.

Entry 27 : Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

While dealing with that question, the Supreme Court observed:

But some of the entries in the different Lists or in the same List may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between

them.

In this context, the following observations of Sir Maurice Gwyer, C.J., in *In re C.P. and Berar, Sates of Motor Spirit and Lubricants Taxation Act* were referred to with approval:

A grant of the power in general terms, standing by itself, would no doubt be construed in the wide sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by considerations arising out of what appears to be the general scheme of the Act...an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary modifying the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the noncombatant clause operate and the federal power prevail. Having referred to these on observation is with approval the Supreme Court held:

It may, therefore, be taken as a well settled rule of construction that every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory.

Applying the above principles, the Supreme Court held that the word industry in all "the above entries must bear the same meaning and if industry in Entry 24 was interpreted to include gas and gas works, Entry 25 might become redundant and in the context of the succeeding entries, namely, Entry 26 dealing with trade and commerce, and Entry 27, dealing with production, supply and distribution of goods, it would be deprived of all its contents and reduced to useless number, and therefore "gas and gas works" in all its aspects must be deemed to have been carved out of" industry in Entry 24.

51. In *O.N. Mohindroo Vs. The Bar Council of Delhi and Others*, the Supreme Court held:

It is a well recognized rule of construction, that the court while construing entries must assume that the distribution of legislative powers in the three Lists could not have been intended to be in conflict with one another. A general power ought not to be, so construed as to make a nullity of a particular power conferred by the same instrument and operating in the same field when by reading the former in a more restricted sense, effect can be given to the latter in its ordinary and natural meaning. It is, therefore, right to consider whether a far reconciliation cannot be effected by giving to the language of an entry in one List the meaning which, if less wide than it might in other context bear, is yet one that can properly be given to it and equally giving to the language of another entry in another List a meaning which it can properly bear. Where there is a seeming conflict between one entry in one List and another entry in another List, an

attempt should always be made to avoid (sic) to see whether the two entries can be harmonised to avoid such a conflict of jurisdiction.

For coming to this conclusion the Supreme Courts relied on *In re C.P. and Berar Sates of Motor Spirit and Lubricants Taxation Act*. AIR 1929 F.I.C. *Bhola Prasad v. Emperor* AIR 1942 F.C. 17, 721 A 91 *Governor General in Council v. Province of Madras* AIR 1951 S.C. 313 and *State of Bombay v. F.N. Balsara* (4) In the above case the Supreme Court was considering the competency of the Parliament to enact the Advocates Act, 1961 with reference to Entries 77 78 and 95 of List I Entry 65 of List II and Entries 26 and 46 of List III of the seventh Schedule to the Constitution of India. These Entries are as follows:

List I--Union List.

Entry 77 : Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such court), and the fees taken therein; persons entitled to practice before the Supreme Court.

Entry 78 : Constitution and organization (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Court.

Entry 95 : Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction ;

List II--State List.

Entry 65 : Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list.

List III Concurrent List.

Entry 26 : Legal, Medical and other professions.

Entry 46 : Jurisdiction and powers of all courts except the Supreme Court with respect to any of the matters in this List.

On applying the principles enunciated above, the Supreme Court, held:

Entries 77 and 78 in List I apart from dealing with the constitution and organisation of the Supreme Court and the High Courts also deal with persons entitled to the practise before the Supreme Court and the High Courts. This part of the two entries shows that to the extent that the persons entitled to practise before the Supreme Court and the High Court are concerned, the power to legislate in regard to them is carved out from the general power relating to the professions in entry 26 in List III and is made the-exclusive field for Parliament. The power to legislate in regard to person entitled to practise before the Supreme Court and the High Courts is thus excluded from entry in List III and is made the exclusive field for legislation by Parliament only.

52. Relying upon the above decision, Mr. P. Chidambaram, learned Counsel who

appears for one of the Respondents in Writ Petition No. 2250 of 1971, contended that the scope of Entry 24 in List III must be so construed that the welfare of Labour contemplated by that Entry will exclude all labour which falls within the scope of any other entry occurring either directly or as incidental or ancillary to the main entry. In other words, his argument is that the legislation on employees of Municipal Corporations or local bodies is a law exclusively falling within Entry 5 of List II, within the competence, of the State Legislature and the scope of that power cannot be cut down by the general expression welfare of labour occurring in Entry 24 of List in, in a manner as no effective law can be made by the State Legislature with respect to local Government and municipal Corporations without at the same time providing for conditions of service of the employees of such local Government and municipal Corporations. He also contended that the Standing Orders Act enacted by the Central Legislature would apply only to those employees with reference to whose service condition provisions have not been made or cannot be made by the competent Legislature in exercise of its powers with respect to a particular Entry falling exclusively within its scope. According to the learned Counsel, by such an interpretation of the two Entries, each will operate in its own field and there will be no question of conflict, and because of the generality of the words welfare of labour occurring in Entry 24 of List III, it cannot be held that the constitution thereby intended to curtail the power of legislation of the State Legislature with respect to Entry 5 of List II so as to make that legislation incomplete and ineffective. We see considerable force in this argument and as a matter of fact this argument is in consonance with the rule of interpretation with reference to the Entries in the different Lists of the seventh Schedule to the Constitution of India, laid down by the decisions referred to above. From this also, it will follow that the Standing Orders Act and the model standing orders can have no application to the Petitioners who are employees of the different Municipal Councils.

53. One other significant thing to be taken note of is that the Standing Orders Act does not contain any provision to the effect that in respect of matters enumerated in the schedule to that Act which should be the subject matter of the certifiable standing orders under the Act, it overrides any other law.

54. There is yet another method of approach. The Municipalities Act is a state enactment dealing with the Municipalities in the State and their employees. On the other hand, the Standing Orders Act is a Central enactment applicable throughout the territory of India in respect of industrial establishments coming within the scope of that Act. From this point of view, it can be said that the rules framed by the Provincial Government in exercise of powers conferred on it u/s 74 of the Municipalities Act constitute a special law, while the model standing orders would constitute a general law and on the basis of the principle that the special excludes the general, it is the rules made by the Provincial Government which will prevail over the model standing orders. Kailasam, J. has taken a directly contrary view by holding that the Standing Orders Act is a special enactment, while the Municipalities Act is a general enactment. For the purpose of coming to

the conclusion which we do, we take note of the extent of operation of the Act as well as the persons to whom the Acts are applicable and once those factors are taken into account, we are clearly of the opinion that the rules made under the Municipalities Act alone will constitute the special law and not the model standing orders. We have already referred to Section 15 of the Standing Orders Act which confers power only on the appropriate Government to make rules setting out the model standing orders and in exercise of this power alone, the provincial Government has made the model standing-orders. Thus, the very Provincial Government in exercise of the powers conferred upon it u/s 74 of the Municipalities Act has prescribed the age of superannuation for municipal employees at 59 years while under the standing orders framed under the Standing Orders Act it has prescribed the age of superannuation for the employees in industrial establishments coming within the scope of that Act at 58 years. This again is a circumstance indicating that the two operate in two independent and separate fields and they do not apply to one and the same situation or person.

55. Therefore, disagreeing with Kailasam, J. we hold that the rules framed by the Provincial Government u/s 74 of the Municipalities Act prescribing the age of superannuation at 55 for the employees of the Municipal Councils will alone apply to the Petitioners herein and not the model standing order 21 prescribing the age of superannuation at 58.

56. As pointed out already, the Petitioner in Writ Petition No. 1635 of 1972 is a Maternity Assistant, while the Petitioners in Writ Petition Nos. 2492 of 1971 and 1452 of 1972 claim to be Sanitary Inspectors. Apart from the fact that these Petitioners have not established that they are workmen employed in an industrial establishment as defined in the Standing Orders Act, to which alone the said Act applies different considerations also apply to them. The, Madras Public Health Act, 1939 was enacted by the Madras Provincial Legislature after the coming into force of the Government of India Act, 1935 to make provision for advancing the public health of the province of Madras. Obviously this Act was with respect to Entry 14 of List II of the Seventh Schedule to the Government of India, Act, 1935, namely Public Health and sanitation; hospital and dispensaries registration of birth and death. This Entry Substantially corresponds to Entry 6 in List II of the Seventh Schedule to the Constitution of India. Sub-section (1) of section 8 of the this Act states that the public health establishment of every local authority (other than the Corporation of Madras) shall be on such scale as the Government may from time to time direct. Sub-section (2) of this section is as follows:

The authorities who may make appointments to the public health establishments referred to in Sub-section (1), the conditions of service of the members of such establishments, and the duties of such members shall, notwithstanding anything contained in the Madras District Municipalities Act, 1920, or the Madras Local Boards Act, 1920, be governed by . regulations, not inconsistent with this Act made by Government. Such regulations may lay down the extent to which the

Director of Public Health shall have disciplinary control over the members of such public health establishment.

Pursuant to the powers conferred on the Government by this section, the Government of Madras made Public Health Establishment (Local Authorities) Regulations 1940. These regulations apply, among others, to Woman Medical Officer (Maternity and Child Welfare) and Sanitary Inspector and Birth and Death Registrar. Regulation 19 of these regulations provided that no officer or servant shall be retained in service after he attained the age of 55 years. Consequently to the Petitioners, it is only this regulations that will apply. The Madras Public Health Act having been enacted in 1939 subsequent to the coming into force of the Government of India Act, 1935, that Act will be a provincial law as contemplated by Section 107 of the Government of India Act and therefore the consideration which applied to the Municipalities Act will not apply to this Act, since the Municipalities Act was enacted before, the coming into force of the Government of India Act, 1935. Still Section 107 of the Government of India Act cannot be applied because both the Madras Public Health Act, 1939 and the Standing Orders Act 1946 are not with respect to matters enumerated in the Concurrent List. In view of this, these Petitioners do not stand on a different footing than the others.

57. We have also referred to the fact that the Petitioners in Writ Petition Nos. 1548 of 1972 and 1965 of 1972 have alleged in their affidavits that teachers employed by the Municipal Councils are retired on attaining the age of 58, while the other employees like the Petitioners were required to retire on attainment of 55 years and that constitutes discrimination and is violative of Articles 14 and 16 of the Constitution of India. We are clearly of the opinion that there is no substance in this contention, because there is a reasonable classification between teachers on the one hand and the other employees of the Municipal Councils on the other, having regard to the nature of the functions they are required to perform.

58. For these reasons, we hold that the Petitioners are not entitled to the reliefs they have prayed for namely, that they are entitled to continue in service till they attain the age of 58 and consequently the notices requiring them to retire on attainment of 55 years or the orders requiring them to retire on attainment of 55 years should be wished. Under these circumstances, the writ petitions fail and are dismissed.

59. As we have pointed out already, the Writ Appeal No. 503, of 1967 has become in-fructuous by efflux of time and the same is dismissed on that ground also even though we have reversed the conclusion of Kailasam J. in allowing the writ petition filed by the Respondent therein.

60. Similarly Writ Petition Nos. 893, 18U and 2556 of 1967 have also become infructuous in view of the fact, that by the orders of interim stay passed by this Court, the respective Petitioners therein had continued in service till they

attained the age of 58. On that ground also these writ petitions are dismissed.

61. In view of the conclusions, we have come to the other writ petitions are also dismissed.

62. there will be no order as to costs in a v. j these cases.