

(1972) 09 MAD CK 0002

In the Madras High Court

Case No : W. App. No. 503 of 1967 etc. and W.P. 893/70, etc.

The Coimbatore Municipality

APPELLANT

Vs

K. Thiruvenkataswami

RESPONDENT

Date of Decision : 15-09-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 246, 254
Employees State Insurance Act, 1948 — Section 2(12)
Factories Act, 1948 — Section 2(k), 2(k), 2(k)(iii), 2(m), 20
Government of India Act, 1935 — Section 100, 107, 107(1), 311, 8
Industrial Employment (Standing Orders) Act, 1946 — Section 1(3), 1(3), 10, 11, 12
Payment of Wages Act, 1936 — Section 2, 2(ii), 2(ii)(g), 2(ii)(g)

Citation : (1972) 09 MAD CK 0002

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

Bench : Division Bench

Advocate : A. Ramachandran for M/s G.M.M. Nathan, V.M. Lenin and G.A. Ponnuswami and Mr. A. Ramachandran for M/s Row and Reddy and M.G.R. Prasad in W.P. and Govt. Pleader in W.A. 503/67, for the Appellant; A. Ramachandran for M/s Row and Reddy and M.G.R. Prasad in W.A. 503/67, Mr. P. Chidambaram for 2nd Respt in W.P. 2250/71 and Govt. Pleader in W.P. 895/72 etc., for the Respondent

Final Decision : Dismissed

Judgement

Ismail, J.—These cases raise a question regarding the applicability of the Industrial Employment (Standing Orders) Act, 1946, (Central Act

XX of 1946), hereinafter referred to as the Standing Orders Act and in particular Or. 21 of the Model Standing Orders, framed by the Province of

Madras in exercise of its powers conferred by S.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 infructuous by efflux of time, it is necessary to refer to the judgment which is the subject matter of the appeal, since practically every one of the petitioners in the connected writ petitions relies upon the said judgment in the affidavits filed in support of the respective writ petitions for claiming the reliefs they have prayed for. The appellant in W.A. 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 S.74 of the Municipalities Act, since the age of superannuation for the municipal employees under R.14 of the said rules was attainment of 55 years of age. The respondent in the writ appeal put forward the contention that Standing Or. 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 W.P. 2746 of 1966. This judgment of Kailasam, J. is reported in Thiruvengkataswami v. Coimbatore Municipality by its Commissioner 1968 1 L.L.J. 361. 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 provision. The Municipalities Act was passed in the year 1920 and S.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.

2. 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.

S.1 (3) provides that the Act applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day

of the preceding 12 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 100 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. S. 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 S. 2 (e) is important and the same is as follows:-

Industrial establishments means:-

(i) an industrial establishment as defined in Cl. (ii) of S. 2 of the Payment of Wages Act, 1936 (IV of 1935), or

(ii) a factory as defined in Cl. (m) of S.20 of the Factories Act, 1948, or

(iii) a railway as defined in Cl (4) of S.20 of the Indian Railways Act, 1890 (Act 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 S.2 (1) 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-S.(1) of S.12A and the same is as follows:

Notwithstanding anything contained in Ss.3 to 12, for the period commencing on the date 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 under S.7 in that

establishment the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of S.9 sub-S.(2) of S.

13 and 13A shall apply to such model standing orders so certified.

S.15(1) confers powers on the appropriate Government to make rules, and clause (b) of sub-S.(2) thereof provides that such rules may set out

model standing orders for the purpose of this Act.

5. 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 S.2 (ii) and enumerated 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 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 S.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 for the

preceding 12 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 20 or more workers are working or were working on any day of the preceding 12 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 S. 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 adopting 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, photogravure or other similar process of 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 W.A. 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 transit and distribute it.

Any establishment in which any work relating to generation or relating to transmission and distribution of electricity is being 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 S.2 of the Payment of Wages Act.

After referring to S. 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 S.2(m) of the Factories Act. In view of this, the learned Judge

held:

As the establishment falls under S.2(ii) of the Payment of Wages Act, 1936 and S.2(m) of the Factories Act, 1948, it is an industrial establishment

within the meaning of S.2(e) of the Industrial Employment (Standing Orders) Act.

Having come to this conclusion, the learned Judge then considered the question, whether the provisions 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 establishments and that the Standing Orders Act being a later special Act would prevail over the

earlier general Act and the provisions in 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. In view of the above conclusion, 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.

6. The questions for consideration are: (1) 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 (2) if it is such an industrial

establishment, whether the conclusion of the learned Judge that the Standing Orders Act prevails over the Municipalities Act for the reasons given

by the learned Judge is correct or not?

7. As we have pointed out already, the writ appeal itself has become infructuous by efflux of time. But nonetheless these two questions have been

argued before us in the other petitions, and consequently, we have to consider the correctness of the above conclusions.

8. 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 out

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 and in the context in which the same occurs in the statutory provisions extracted above. The meaning of the word

"establishment" as 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 3rd New International Dictionary of the English language, unabridged, (1968) Edition defines "establishment" so far as is 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

furnitures, fixtures, retinues, 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 S. 2 (12) of the Employees State

Insurance Act, 1948, is which substantially the same as the definition of the term "factory" in the Factories Act in Nagpur Electric Light and Power

Co. Ltd v. Employees State Insurance Corporation, by Regional Director 1967-2 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 the

meaning of S.2 (12).

A factory must occupy a fixed site--.....see Halsbury's Laws of England, 3rd Edn. Vol. 17, Art. 15, p. 15.

The company is factory has a fixed site. It is located inside the Kemptee 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 thereof whereon ten or more workers

are working....." The words italicised above clearly and unambiguously show that only a fixed place, either open or building is denoted by the

expression "establishment" occurring in these two definitions. This derives further support from S.1(3) of the Standing Orders Act itself, because

that uses the expression "industrial establishment" wherein 100 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.

9. We are also unable to agree with the learned Judge on the construction of the expression "generation, transmission and distribution of electricity, occurring in S. 2(ii)(g) of the Payment of Wages Act. The learned Judge negatived 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" 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" 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" appears 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" "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 for" and vice versa

--Vide Maxwell on the Interpretation of Statutes 12th 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, 1936, any intention of the

legislature to compel us to read the word "and" as "or" between the expressions, "transmission" and "distribution".

10. The only argument that was advanced by Mr. A. Ramachandran, learned counsel for the respondent in W.A. 503 of 1967 is that in defining

the expression "manufacturing process" in S. 2(k) of the Factories Act, one of the items which appears in S. 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 Order Act, we must construe the word "and" occurring between the words "transmission" and "distribution" in S. 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 "transmission" is absent. Thirdly, the expression in the Factories Act

refers to power, where the expression in the payment of Wages Act refers to electricity or any other form of power. Fourthly, the manufacturing

process as defined in S. 2 (k) will have to be present, before any premises can become a factory as defined in S. 2 (m) of the Factories Act. In

addition to that, 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 S. 2 (ii) (g) of the Payment of Wages Act should be read as "or".

11. 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 S. 2 (k) (iii) the word "or" is used in 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 12

months, if the manufacturing process is being carried on with the aid of power, and 20 or more workers should have been working on any day of

the preceding 12 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.

12. 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, 1946 is concerned;

3. In any part of such premises "manufacturing process" as defined in S. 2 (k) of the Factories Act, 1948, should be carried on; and on such

premises 10 or more workers must be working or must have been working on any day of the preceding 12 months, if the manufacturing process is

being carried on with the aid of power and 20 or more workers must be working or must have been working on any day of the preceding 12

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, 100 or more workmen must be employed or must have been employed on any day of the preceding 12 months,

vide: S. 1 (3) of the Standing Orders Act.

These are facts to be established by affidavits 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.

13. 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.

14. 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 Orders Act, except for making the bald assertions that the entire municipality or any

particular department of the municipality is an "industrial establishment" is 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 and 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 Manipulates 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 provisions. 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.

x x x x

[The discussion on the facts of each of the writ petitions is omitted--Ed.]

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 contend that either the entire municipality is an industrial establishment coming within the

scope of the Standing Orders Act or a 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. S. 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, bazar, station or other

local area or any group of the same in the immediate neighbourhood of one another; or (b) to exclude from a municipality any local area comprised

therein and defined in such notification; or (c) to include within a municipality any local area in the vicinity thereof and defined in such notification.

S. 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-S.2 of S. 6 is:

The Municipal council shall by the name of the municipality be a body corporate , shall have perpetual succession and a common seal and subject

to any restriction or qualification imposed by this or any other enactment, shall

be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property moveable or immovable, or entering into contracts and of doing all things necessary for the purpose of its constitution.

From the language of S. 4 of the Municipalities Act, it will be seen that a municipality is a town, village, hamlet, bazar, 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 understandable

and incomprehensible. Equally understandable 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 a municipal office comprises of

different branches or department, 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 S. 2(ii) (g) of the Payment of

Wages Act, 1936 or S. 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 petitions that there is an establishment in the sense in which we have explained and that in such an establishment 100 or more workers are

employed or were being employed, as contemplated by S.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 petitions 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" under 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 carried 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 operations connected with the supply of water is being carried on. As a matter of fact it is difficult to see how the petitioner in W.P. 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.

15. We may mention one other feature also. In almost every one of these writ petitions, the respective petitioners had contended that under the Municipalities, 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. The 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 the entire municipality is an industrial establishment. Even if 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 to 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 be an establishment in which a certain number of workmen are working with some degree of permanency without they 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 annexing 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 the 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, these 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 departments arranged for the convenient discharge of the duties of the municipalities can ever be said to be an industrial establishment.

16. 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 58. In most of these cases, and the respective petitioners that

they would have to retire on a particular day on which the municipalities concerned have just inform they would attain the age of superannuation

and hand over charge. It is to quash these notices that the writ petitions 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.

17. For the reasons mentioned above, none of these petitioners is entitled to succeed. As we have pointed out already, W.A. 503 of 1967 has

become infructuous by efflux of time. Similarly, W.P. 893, 181 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.

18. 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.

19. 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 S.107 of

the Government of India Act, 1935, corresponding to Art. 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 of two affidavits filed in support of these writ

petitions, there is a reference to Art. 254 of the Constitution of India, and Mr. Ramachandran frankly conceded that it was a mistake and the real

provision is S.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 S. 311 of the Government of India Act, 1935. According to that Section, the

expression, "existing Indian law" means--

Any law, ordinance, order, by-law, rule or regulation passed or made before the commencement of Part III of the Act by any legislature, authority

or person in any territories for the time being comprised in British India, being a legislature, authority or person having power to make such a law,

ordinance, order, by-law, 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 S.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 improvement 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, when it was enacted, and the Legislature of

Tamilnadu 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, 1935, is 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; employees' 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 path and substance. The Federal court in AIR 1941 47 (Federal Court)

observed--

It must inevitably happen from time to time that legislation, though purporting to deal with the 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 Profallakumar Mukherjee v. Bank of Commerce, Ltd., Khulna, 74 I.A. 23 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 *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, :

The entries in the three Lists are only legislative beads or fields or 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.

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

The subjects dealt with in the legislative list 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 ordinarily have been

regarded as included under "land" if they had not been specifically mentioned in item 21. I think, however that one 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. Balasara* 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. v. State of Ajmer*, 1955-1-S.C.R. 735 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 under 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 above, is

that by virtue of the operation of S.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 order made under the Standing Orders Act, which is a central legislation,

and therefore, the rules made under the provincial law must 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. S.

107(1) of the Government of India Act, 1935, which 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 S. 107(1) extracted above. What is meant by Provincial law is defined in S. 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 S. 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 S. 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 S.107(1) as well as the definition of the term "Provincial law" or "Provincial Act" occurring in S.311 of the Government of India Act. 1935. As a matter of fact, a Full Bench of the Orissa High Court in Ramachandra Misra v. President Dt. Board, Ganjam, AIR 1951 Orissa 1, has also taken the same view. The Orissa High Court was considering the alleged repugnancy between the Madras Local Board 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 S. 107 of the Government of India Act has no application to the present cases is that 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.

21. The Privy Council in Meghraj v. Alla 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 entry No. 7, 8 and 10 of the Concurrent list, and consequently S.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 11, without

any necessity to invoke any powers from the Concurrent List,

List III and accordingly questions of repugnancy under S.107 of the Government of India Act, 1933 did not arise, thereby implying that S. 107

would be attracted only when both the laws were made with respect to a matter enumerated in the Concurrent List.

22. The Federal Court in *Lakshminarayanadas v. Province of Bihar* AIR 1950 F.C. 59 pointed out that to attract the operation of S 107 read with

S.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 S. 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 Con-current 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, S.107 of the Government of

India Act, 1935, cannot be invoked. For these reasons, we hold that the contention of the learned counsel for the petitioners that by virtue of S.

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 and the rules made thereunder fails.

23. Once S. 107 of the Government of India Act, 1933 which corresponds to Art, 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 under 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 Art. 246 of the Constitution of India corresponding to S. 100 of the Government of India Act, 1935 secured the predominance or

supremacy of the Central Legislature in case of overlapping as between List 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*,

Art. 246 Cls. (1) and (3) have to be invoked only if there is a conflict as to the scope of two 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, Ltd., Khulna 74 I.A. 23. 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 vires 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 legislature 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 jurisdictions. 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 along 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 arranging 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 matter, 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.

24. Sir Maurice Gwyer, C.J. in *In re C.P. and Berar Sales of Motor Spirit and Lubricants Taxation Act* . 1; 49 L.W. 287 (F.C.) 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-eminence 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 limits 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 *Citizen Insurance Co., v. Parsons* 1882-7 A.C. 96 at pages 108 and 109.

25. The Privy Council in *Governor General in Council v. Province of Madras*, Mad. 72 I.A. 91 had to consider the competency of the Madras

Legislature to enact the Madras General Sales Tax Act 1939. After referring to the provisions of S.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, is yet 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.

26. 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, ""later-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

Legislature in separate and independent entries.

27. The Supreme Court in the *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 of 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 42: 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.

28. 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 Sales of Motor Spirit and Lubricants Taxation Act*

AIR 1939 F.C.(sic); 49 L.W. 287 (F.C.), were referred to with approval:

A grant of the power in general terms, standing by itself, would no doubt be construed in the wider 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 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 non-obstante clause operate and the federal power prevail.

Having referred to these observations 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 harmonise 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

negatory.

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 lumber, and therefore gas and gas works, in all its aspects must be deemed to have been carried out of "industry"

in entry 34.

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

It is well recognised 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 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 fair reconciliation cannot be effected by giving to

the language of an entry in one list the meaning which is 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 these two entries can be harmonised

to avoid such a conflict of jurisdiction.

For coming to this conclusion, the Supreme Court relied on *In re C.P. and Berar Sales of Motor Spirit and Lubricant Taxation Act* AIR 1939

F.C.(sic); 49 L.W. 287 (F.C.). *Bhola Prasad v. Emperor* AIR 1942 P.C. 17 *Governor General in Council v. Province of Madras* Mad. 72 I.A.

91 and *State of Bombay v. F.N. Balsara* A.I.R 1951 S.C. 318. 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 follow:--

List-I-Union list

Entry 77: Constitution organisation, jurisdiction and powers of the Supreme Court (including contempt of such court) and the fees taken therein;

persons entitled to practise before the Supreme Court;

Entry 78: Constitution and organisation, (including vacations) of the High Courts except provisions as to officers and servants of High Courts;

persons entitled to practise before the High Courts.

Entry 95: Jurisdiction and powers of all courts, except the Supreme Court with respect to any of the matters in this list; admittedly 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 Court also deal with persons

entitled to the practice before the Supreme Court and High Courts. This part of the two entries shows that to the extent that the persons entitled to

practice before the Supreme Court and the High Court are concerned, the power to legislate in regard to them is (sic) out from the general power

relating to the profession in entry 26 is list III and is made the exclusive field for Parliament. The power to legislate in regard to persons entitled to

practice before the Supreme Court and the High Courts is thus excluded from entry 26 in list III and is made the exclusive field for legislation by

Parliament only.

Relying upon the above decision, Mr. P. Chidambaram, learned counsel who appears for one of the respondent in W.P. 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 include all labour which falls

within the scope of any other entry recurring 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 III, in

as much as no effective law can be made by the State Legislature with respect to local Government and Municipal corporation 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 conditions

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 two entries, each will operate in its own field, and there will therefore, be no question of conflict, and because of the generality of the word "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.

30. 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 the Act which should be the subject matter of the certifiable standing orders under the act it overrides any other law.

31. 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 under 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 Acts as well as the persons to whom the Acts are applicable and once those factors are taken into account, we are clearly of 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 S. 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 under S.74 of the Municipalities Act has prescribed the age of superannuation

for municipal employees at 55 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.

32. Therefore, disagreeing with Kailasam, J. we hold that the rules framed by the Provincial Government under 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.

33. As pointed out already, the petitioner in W.P. 1635 of 1972 is a maternity assistant while the petitioners in W.P. 2492 of 1971 and 1452 of

1972, claim to be sanitary inspectors. Apart from the fact that those 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, 19(sic)9 was enacted by the Madras Provincial Legislature after the coming into force of the Government of India Act,

1935, to make provisions for advancing the public health of 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; hospitals and dispensaries, registration of births and

deaths. This entry substantially corresponds to entry 6 in list II of the seventh schedule to the Constitution of India, Sub-S.(1) of S. 8 of 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-S.(2) of this section is as follows--

The authorities who may make appointments to the public health establishments

referred to in sub-s.(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 1929 or the Madras Local Board Act 1920 be governed by regulations, not inconsistent with this Act, made by the Government. Such regulations may lay down the extent to which the Director of Public Health shall have disciplinary control over the member of such public health establishment.

34. 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 there Regulations provided that no officer or servant shall be retained in service after he

attained the age of 55 years. Consequently to these petitioners, it is only the regulations that will apply. The Madras pubic Health Act having been

enacted in 19(sic)9, subsequent to the coming into force of the Government of India Act, 1938, that Act will be a provincial law as contemplated

by S.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 S.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 from the others.

35. We have also referred to the fact that the petitioners, in W.P. 1548 of 1972 and 1665 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 Art. 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 requited to perform.

36. 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 quashed. Under these circumstances, the writ petitions fail and are dismissed.

37. As we have already pointed out, the writ appeal W.A. 503 of 1967 has become infructuous 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.

38. Similarly W.P. 893, 1814, 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. In view of the conclusions we have come to, the other writ petitions are also dismissed. There will be no order as to costs in any of

these cases.