

(1983) 06 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No's. 956, 2013, 2014 and 2077 of 1979

Union Bank of India and Others

APPELLANT

Vs

Additional Commissioner for Workmen's Compensation and
Others

RESPONDENT

Date of Decision : 15-06-1983

Acts Referred:

Constitution of India, 1950 — Article 12

Food Corporations Act, 1964 — Section 3

Tamil Nadu Shops and Establishments Act, 1947 — Section 4(1), 41

Citation : (1984) 55 CompCas 358 : (1985) ILR (Mad) 238

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Judgement

1. Since the points involved in all the writ petitions are the same, they are dealt with together. The petitioners in all these writ petitions are nationalised Banks and the second respondent in each of the writ petitions is their employee and the first respondent in W.P. No. 956/79 is the Addl. Commissioner for Workmen's Compensation, Coimbatore, and the first respondent in the other writ petitions is the Addl. Commissioner for Workmen's Compensation, Madras, whose orders passed under S. 41 of the Tamil Nadu Shops and Establishments Act has been challenged in these writ petitions. As the facts are substantially the same in all the writ petitions, it is enough if the facts in the first writ petition, namely, W.P. No. 956/79, are dealt with in detail.

2. The second respondent therein was employed as a clerk in the Coimbatore Branch of the Union Bank of India, the petitioner therein. Certain charges were framed against him by a memo dated 6th July, 1973, and after holding a domestic enquiry and after following the procedure set out in the Bipartite Settlement entered into between the Bank Employees' Federation and the bank management, he has been dismissed from service by an order of the management dated 8th December, 1974. This order was confirmed later on by the appellate authority of the bank, i.e., the Managing Director, by an order

dated 24th July, 1975. Against the said order, the second respondent had referred an appeal before the appellate authority constituted under the Tamil Nadu Shops and Establishments Act, 1947, and the same was taken on file in T.N.S.E. Case No. 11 of 76. In the counter-affidavit filed by the management before the appellate authority, the petitioner-bank had questioned the jurisdiction of the appellate authority to entertain the appeal on the ground that under S. 4(1)(c) of the Tamil Nadu Shops and Establishments Act, establishments under the Central and State Governments are totally exempted from the applicability of the Shops Act and that the petitioner-bank, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act No. 5/70) (hereinafter referred to as "the 1970 Act"), being an establishment under the Central Government, the appeal itself was not maintainable. On the said plea, arguments were heard by the appellate authority who ultimately held that the appeal is maintainable as the petitioner-bank is not an establishment under the Central Government as contended by the bank, by order dated 25th January, 1979, Aggrieved by the said order of the appellate authority, the first respondent in the writ petition, the bank has approached this court for the issue of a writ of certiorari to quash the said preliminary order dated 25th January, 1979.

3. According to the petitioner, the appellate authority has erred in law in rejecting the preliminary objection as to the maintainability of the appeal and under S. 4(1)(c), the petitioner-bank, as an establishment under the Central Government, will stand exempted from the provisions of the Shops Act and on a proper reading of the provisions of the Central Act 5 of 1970, the conclusion is inescapable that the corresponding new banks constituted under that Act are clearly establishments under the Central Government and, consequently, fall outside the Shops Act in view of S. 4(1)(c) of that Act. The reasoning by the appellate authority that only establishments of the Central Government are exempted and not establishments under the control of the Central Government is erroneous. In any event, an analysis of the provisions of the Central Act 5 of 1970 would show that the ownership of the banks, the administration and control of those banks and all their assets vested with the Central Government and that as such it will fall under the category of establishments under the Central Government referred to in S. 4(1) of the Shops Act. Thus, the main question for consideration is whether the nationalised banks, i.e., banks constituted under Act 5 of 1970, are establishments under the Central Government as contended for by the petitioner banks.

4. As already stated, the first respondent in all the writ petitions, the appellate authority under the Shops Act, has held that S. 4(1)(c) exempts only the establishments that are directly under the government and not establishments under the control of the Government and the petitioner-banks being only under the control of the Government, they cannot come within the scope of the exemption contained in S. 4(1)(c). The question is, whether the view taken by the appellate authority is legally tenable.

Section 4(1)(c) under which exemption is claimed by the banks from the provisions of the Shops Act is as follows :

"4(1) Nothing contained in this Act shall apply to. ...

(c) establishments under the Central and State Governments, local authorities, the Reserve Banks of India, the Federal Railway Authority, a railway administration operating a federal railway, and cantonment authorities; "

The word "establishment" has been defined under S. 2(6) of the Act as follows :

"2(6) "establishment" means a shop, commercial establishment, theatre or any place of public amusement or entertainment and includes such establishment as the Government may, by notification, declare to be an establishment for the purposes of this Act;".

A "commercial establishment" has been defined under S. 2(3) of the Act and it is as follows :

"2(3) "commercial establishment" means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishment as the State Government may be notification declare to be a commercial establishment for the purposes of this Act; ".

5. Having regard to the definition of "establishment" and "commercial establishment", a bank will come within the scope of S. 4(1)(c) if it is under the Central or State Government. Here the petitioner-banks claim to be under the Central Government in view of the provisions of the 1970 Act. We have to, therefore, consider the scope of the provisions of the said Act to find out whether the new banks constituted under that Act are establishments under the Central Government within the meaning of S. 4(1)(c) of the Shops Act. The Act, as its long title itself shows, has been enacted for the acquisition and transfer of the undertakings of the existing banking companies. Under S. 3 and S. 4, the corresponding new banks are constituted on the commencement of this Act and the undertaking of even existing bank has been taken to be the corresponding new bank. The "corresponding new banks" and the "existing bank" are defined in S. 2(d) and (f), respectively. Chapter IV of the Act deals with the management of corresponding new banks. Section 7 occurring in that chapter provides that the head office of each corresponding new bank shall be at such place as the Central Government may, by notification in the Official Gazette, specify in this behalf. It also provides that general superintendence, direction and management of the affairs and business of a corresponding new bank shall vest in a board of directors which shall be entitled to exercise all such powers and do all such acts and things as the corresponding new bank is authorised to exercise and do. It also authorises the Government to constitute the first board of directors of the

corresponding new bank in consultation with the Reserve Bank, consisting of not more than seven persons. It further provides that the chairman of the existing bank holding office as such immediately before the commencement of this Act, shall be the custodian of the corresponding new bank and he shall hold office during the pleasure of the Central Government. Section 8 provides that the corresponding new banks shall, in the discharge of their function, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give. Section 9 enables the Central Government to make a scheme for carrying out the provisions of the Act particularly (1) for altering the capital structure of the corresponding new bank (2) for constituting the board of directors of the corresponding new bank, and (3) for the reconstitution of any corresponding new bank into two or more corporations, the amalgamation of any corresponding new bank with any other corresponding new bank or with another banking institution, the transfer of the whole or any part of the undertaking of a corresponding new bank to any other banking institution to a corresponding new bank. Sub-s. (4) of S. 9 enables the Central Government, after consultation with the Reserve Bank, to make a scheme or to amend or vary any scheme made under sub-s. (1). Sub-s. (5) of S. 9 states that every scheme made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament. The scheme will be subject to any modification suggested by both the houses. Section 10 provides for the closure of accounts and disposal of profits. Sub-ss. (1) to (6) of S. 10 deal with the manner of the appointment of auditors and the manner of audit by them and the submission of the report to the Reserve Bank and the Central Government. Sub-s. (7) of S. 10 says that the corresponding new bank shall transfer the balance of profits to the Central Government. Sub-s. (8) directs the Central Government to place the auditor's report on the working and activities of each corresponding new bank before both the Houses of Parliament then and there. Section 18 says that no provisions of law relating to winding up of corporations shall apply to a corresponding new bank and no corresponding new bank shall be placed in liquidation save by order of the Central Government and in such manner as it may direct. Section 19 enables the board of directors of a corresponding new bank, after consultation with the Reserve Bank and with the previous sanction of Central Government, to make regulations, not inconsistent with the provisions of this Act or any scheme made thereunder or provide for all matters for which provisions is expedient for the purpose of giving effect of the provisions of this Act. However, the provisions of the scheme cannot be taken to be decisive on the scope of the provisions of the Act.

6. The provisions of the said Act had come up for consideration before courts in connection with the question whether new banks constituted under that Act will come within the scope of Art. 12 of the Constitution. The Calcutta High Court in *Manoj Kanti Basu v. Bank of India*, [1975] 51 FJR 419, had held that the Bank of India, one of the nationalised banks, will come within Art. 12. In *Sukhdev Ratilal*

Patel Vs. Chairman, Bank of Baroda and Another, , the Gujarat High Court has held that the Bank of Baroda, one of the nationalised banks, will come under the scope of Art. 12. In Miss P. S. Geeta v. Central Bank of India [1978] LIC 1271, the Andhra Pradesh High Court has held that the Central Bank, one of the nationalised banks, will fall within the scope of Art. 12. In Lachman Dass Agarwal v. Punjab National Bank [1978] LIC 423, the Punjab High Court has held that the Punjab National Bank, one of the nationalised banks, will fall within the scope of Art. 12.

7. According to Mr. M. R. Narayanaswamy, the learned counsel for the writ petitioners, these decisions would support his stand that the nationalised banks are establishments under the Central Government. According to him, though the said decisions had been rendered with reference to Art. 12 of the Constitution, the reasoning given in those decisions will squarely apply here.

8. The learned counsel for the second respondent, however, submits that the above decisions relating to the question whether nationalised banks will come under the scope of Art. 12 of the Constitution will not apply here where the enquiry is as to whether the nationalised banks are establishments under the Central Government. According to him, the tests laid down in those decisions for finding out whether the nationalised banks come within the scope of Art. 12, are not conclusive on the question whether the nationalised banks are under the Central Government. The learned counsel submits that the only test to find out whether the nationalised banks are establishments under the Central Government is the test of ownership, that as the nationalised banks which have been created and function under a statute can never be treated as establishments under the Central Government, that whatever be the control or supervision by the Central Government on the functioning of the nationalised banks, that cannot make them establishment of or under the Central Government and that, for that matter, any statutory corporation which has a corporation sole independent of the Government can never be treated as belonging to or under the Government.

9. However, it is not possible to accept such a wide proposition as has been put forward by the learned counsel appearing for the contesting such respondent that a statutory corporation can never be treated as an establishment of or under the Government. As a matter of fact, U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi, [1970 I L.L.J. 321, proceeds on the basis that even a statutory corporation can be owned or managed by the Government. In that case, it was held that an employee of a statutory body, even if it be owned and managed by the Government, does not enjoy a statutory status. Though the authority of that decision has subsequently been eroded by the later decision of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , the fact remains that in that Tyagi's case, the possibility of a

statutory corporation being owned and managed by the Government was assumed and this has not been doubted in Sukhdev Singh's case. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*, (supra) wherein the LIC which has also been created by a statute has been taken to be an agency of the Central Government carrying on the exclusive business of life insurance, it has been held that each and every provisions in the Life Insurance Corporation Act shows in no uncertain terms that the voice is that of the Central Government and the hands are also that of the Central Government. In that case, the Industrial Finance Corporation which was a body corporate and which is financed and controlled by the Central Government was also held to be under the complete control and management of the Central Government. The Supreme Court also held in that case that the Oil and Natural Gas Commission which is a statutory body is being owned by the Government. The reasons given by their Lordships of the Supreme Court for holding Oil and Natural Gas Commission, the LIC and the Finance Corporation as statutory bodies owned by the Central Government squarely apply to the fact of this case. The structure of the Act. 5 of 1970 indicates that the nationalised banks are only agencies of the Government carrying on the business banking. No doubt, under the provisions of the Act, each one of the nationalised banks is a body corporate. But the entire capital of each one of the nationalised banks has become a shareholder in a nationalised banks (sic). There is a control and management of the nationalised banks either directly or indirectly by the Central Government. The Central Government can also reduce the capital of the banks and can also reconstitute the nationalised banks and also amalgamate them. All the properties and assets of the nationalised banks vest in the Central Government and their residual profit also goes to the Central Government. The directors and chairman of the nationalised banks are nominated by the Central Government. They cannot be wound up except by the Central Government. Their accounts are audited by auditors who are appointed with the previous approval of the Comptroller and Auditor-General of India and the report is forwarded to the Central Government and the same shall be placed before both the House of Parliament. All these features clearly show that the voice of the nationalised banks is that of the Central Government and their hands are also that of the Central Government. This mean that the nationalised banks belong to the Central Government and the Central Government owns them. It is no doubt true that the decision in Sukhdev Singh's case, (supra), was rendered with reference to Art. 12 of the Constitution. But, the reasoning therein squarely applies for the determination of the question as to who owns the statutory corporations like the nationalised banks.

10. The later decision of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , is also in point. In that case, the Supreme Court after making an exhaustive survey of the decisions of that Court and the American Courts, summarises some of the factors which determine whether a corporation is an agency or instrumentality of Government. In *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay*

Narayan Vajpayee, , the question was whether the U.P. State Warehousing Corporation constituted under the Madhya Pradesh State Warehousing Corporation Act is an agency or instrumentality of the Government. The court found that the U.P. Warehousing Corporation is a statutory body wholly controlled and managed by the Government and its status is analogous to that of the corporations which were under consideration in Sukhdev Singh's case (supra). In that case, Chinnappa Reddy J. referred as follows at P. 229 in para 3.

"I find it very hard indeed to discover any distinction on principle between a person directly under the employment of the Government and a person under the employment of an agency or instrumentality of the Government or a corporation, set up under a statute or incorporated but wholly owned by the Government. It is self-evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure "social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship", and to ensure "equality of status and of opportunity. That is the proclamation of the people in the preamble to the Constitution. The desire to attain these objectives has necessarily resulted in intense Governmental activity in manifold ways. Legislative and executive activities have reached very far and have touched very many aspects of a citizen's life. The Government, directly or through the corporations, set up by it or owned by it, now owns or manages, a large number of industries and institutions. ... The Government, its agencies and instrumentalities, the corporations set up by the Government under statutes and corporations incorporated under the Companies Act but owned by the Government have thus become the biggest employers in the country. There is no good reason why, if Government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealings with the employees, the corporations set up or owned by the Government should not be equally bound and why, instead, such corporations could become citadels of patronage and arbitrary action."

11. The learned counsel for the contesting second respondent has referred to the following decisions as taking a different view. In Madras State Electricity Board Vs. Commissioner of Labour and Others, , this Court has held that the Madras State Electricity Board was not entitled to exemption from the application of S. 4(1)(c) of the Shops Act. The reasoning given by the Court is as follows :

"That the Electricity Act gives the State Government a measure of control over the activities of the Board, which, subject to that control, is an autonomous body, did not admit of any doubt. I do not think it is necessary to discuss in detail the statutory provisions of the Electricity Act to examine the degree of control which the State Government could lawfully exercise. It was clear that the employees of the Board were not employees of the State Government. The clerical employees of the Board constituting an establishment and a commercial establishment

within the meaning of S. 2(3) of the Shops and Establishments act, were not the clerical employees of the State Government, and therefore, the establishment cannot be viewed as an establishment under the State Government within the meaning of S. 4(1)(c) of the Act. That the Board was under the control of the State Government did not make the employees, employees of the Government, nor did it make the establishment consisting of clerical employees, and establishment under the State Government. It is the direct relationship of master and servant between the State Government and the persons employed in the establishment of commercial establishment that is necessary to take that establishment outside the scope of the Act under S. 4(1)(c)."

12 In that case, the Court has held that the mere statutory control over the establishment was not sufficient to determine that the establishment is one under the State Government. In *Madras State Electricity Board v. Commissioner of Labour* 1961 I L.L.J. 297, this Court again held that the Electricity Board is not a department of the Government, and, therefore, it cannot claim the exemption under S. 4(1)(c). Reliance was placed on an earlier decision of this Court in *G. Narayanaswami Naidu v. C. Krishnamurthy*, AIR 1958 Mad. 343, wherein the Court, while considering the question whether the LIC was a department of the Government or an agent of the Government, observed that the service under the LIC is not a service under the Government. All the decisions of this Court proceed on the basis that where a statutory body is created by a statute as a body corporate by name having perpetual succession, it cannot be taken to be owned by the Central Government merely because the Government has some control over the same. But the said reason runs contra to the view taken by the Supreme Court in *Sukhdev Singh's case* (supra), which specifically dealt with the provisions of the LIC and held that the LIC is owned by the Central Government. After the decision of the Supreme Court in *Sukhdev Singh's case* (supra), these decisions cannot be taken to lay down the law correctly.

13. The learned counsel for the contesting second respondent then refers to the decision of the Supreme Court in *State of Punjab and Others Vs. Raja Ram and Others*, , where the Food Corporation of India was held to be a company within S. 3(e) of the Land Acquisition Act. The Food Corporation of India was admittedly created by S. 3 of the Food Corporation Act, 1964. Sub-s. (2) of S. 3 clothes the Corporation with the attributes of a company. So long as the Food Corporation is not a department of the Government and is a company, the provisions of Chapter VII of the Land Acquisition Act have to be invoked. While dealing with the necessity to invoke Chapter VII of the Land Acquisition Act for acquiring the lands for the Food Corporation of India, the Supreme Court has observed that the Food Corporation is not a Government department, that a Government department has to be an organisation which is not only completely controlled and financed by the Government but has also no identity of its own, that the money earned by such a department goes to the exchequer of the Government and losses incurred by the department are losses of the Government, that the corporation, on the other hand, is an autonomous body capable of acquiring,

holding and disposing of property and having the power to contract, and that though the Food Corporation may be treated as an agency or instrumentality of the Central Government, it cannot be taken to be a department of the Government. The said decision is distinguishable on facts. There, the question was whether Chapter VII of the Land Acquisition Act will be applicable and for that purpose it had to be seen whether the Food Corporation is a company as defined in S. 3(e) of the Land Acquisition Act. Even if the Food Corporation is owned by the Government, so long as it comes within the definition of a company, Chapter VII of the Land Acquisition Act has to be applied. Therefore, it was held that in any event the Food Corporation of India cannot be taken to be owned by the Central Government. The learned counsel then refers to the decision reported in *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, . In that case, the Western Coalfields Ltd., claimed exemption from payment of property tax under the M.P. Municipal Corporation Act and the M.P. Municipalities Act on the ground that as the company is wholly owned by the Government of India, its lands and buildings cannot be subjected to property tax in view of Art. 285(1) of the Constitution read with S. 127(A)(2) of the M.P. Municipalities Act and S. 136 of the M.P. Municipalities Corporation Act which provide that "the property tax shall not be leviable on buildings and lands owned by or vesting in the Union Government". In that case, the court held that even though the entire share capital of the concerned companies has been subscribed by the Government of India, it cannot be predicated that the companies themselves are owned by the Government of India that the companies, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India, and, therefore, the lands and buildings which are vested in and owned by the companies will not be exempted. Even here, the decision is based on the fact that a statutory corporation is a separate entity apart from the Central Government, with power to acquire, hold and dispose of the property, and the properties of the corporation cannot, therefore, be taken to be the properties of the Government. The exemption was in respect of properties owned by the Central Government and not in respect of properties owned by a corporation. It is, no doubt, true that in the said decision, the Supreme Court has held that the statutory corporations, which have a corporation sole and which are entitled to acquire, hold and dispose of properties cannot be taken to be a department of the Government, even though the statutory corporation may be an agency or an instrumentality of the Government. But the question for consideration in this case is not whether the properties owned by the nationalised banks or the persons employed by the established banks are those belonging to or employed by the Government. But the questions whether a statutory corporation is an establishment or an undertaking under the Government. The fact is that the nationalised banks have got a separate entity of their own and are not the departments of the Government, still having regard to the fact that they had uniformly been held to be the agencies or instrumentalities of the Government, right from the decision of the Supreme Court in *Sukhdev Singh's case* (supra),

the question is whether they could be taken to be establishments under the Central Government.

14. It is significant to note that the words used in S. 4(1)(c) of the Shops Act is "under the Central Government" and not "of the Central Government". Even if the statutory corporations like the nationalised banks are separate entities apart from the Central Government, in view of the fact that they are entitled to acquire, hold and dispose of the property without reference to the Government the question will still arise whether they are under the Central Government. Even if the statutory corporations have got a separate identity apart from the Central Government still they may be "under the Government". As already stated, the decisions of the Supreme Court have established two legal positions : (1) that a statutory corporation such as the bank, whose peculiar features have been referred to above with reference to the provisions of the 1970 Act, can be taken to be owned by the Central Government or it should be taken to be agency or instrumentality of the Central Government, and (2) that even if the statutory corporation belongs to the Central Government or is owned by the Central Government or it is an agency or instrumentality of the Central Government, still having regard to its separate legal status having a legal personality of its own with power to acquire, hold and dispose of the property, the properties of the statutory corporations or its employees cannot be taken to be the properties of, or the employees of, the Central Government, respectively. But these decisions do not solve the problem before us, that is, for finding out whether the statutory corporations are "under the Central Government". The word "under" cannot be taken to have the same meaning as "of". If the word "of" is used, it will bring in the notion of ownership. But, where the word used is "under", it will take in the notion of agency or instrumentality. It has already been held by the Supreme Court that a statutory corporation, like the LIC, is an agency or instrumentality of the Government. The constitution and structure of the nationalised banks as can be gathered from the provisions of the 1970 Act, which is not different from the character and the nature of the LIC, indicate that the nationalised banks are functioning "under the Central Government".

As a matter of fact, the various State Legislatures have used different expressions with reference to the grant of exemption under the relevant Shops and Establishments Act.

Exemption provision : 1. Tamil Nadu Shops and Establishments Act - S. 4(1)(c)
2. Kerala Shops and Establishments Act - Nothing contained in this Act shall apply to - S. 3(1)(c) 3. Andhra Pradesh Shops and Establishments Act - S. 4(1)(b)
4. Pondicherry Shops and Establishments Act - S. 4(1)(b)
5. Reserve Bank of India, 6. Pondicherry Shops and Establishments Act - S. 4(1)(b)
7. Railway Administration operating Establishments Act - any railway as defined in clause S. 5(1)(b) 20 of Art. 366 of the Constitution and Cantonment Authorities. 5. Karnataka Shops and Establishments Act - Nothing in this Act shall apply to Establishments Act - "offices of or under the Central S. 3(1)(a) and State Governments or local auth-

orities except commercial undertakings. 6. Bombay Shops and Notwithstanding anything contained in the Establishments Act in this Act the provisions of this (Bombay Act 79 of 1948) - S. 4 Schedule 2 shall not apply to the establishments, employees and other persons mentioned against them in the 2nd column of the said Schedule. Schedule II - Item 1 : (1) Establishments of the Central Government (2) Establishments of the State Government. 16. The learned counsel for the contesting second respondent relies on the decision of the Full Bench of the Kerala High Court in *Canara Bank and Others Vs. Appellate Authority and Others*, which has held, while construing a similar provision in S. 3(1)(c) of the Shops and Commercial Establishments Act, 1960, that the Canara Bank will not come under the exemption provision. It is no doubt true, the Canara Bank is one of the nationalised banks and it was held not an establishment under the Central Govt. The reasons given for reaching that conclusion are, (1) the decisions holding that the corporations constituted under the legislative enactments are "other authorities" within the meaning of Art. 12 of the Constitution are not of much assistance; (2) The control of the Government over the nationalised banks is limited only to matters of policy under S. 8 of the 1960 Act, and beyond that provision there is no provision for identifying a nationalised bank constituted under that Act with the Government and that the nationalised bank as legal person has got a right to hold and acquire property, is liable to Income Tax as any other Indian citizen and, in the manner of day-to-day administration and appointing and dismissing officers and staff, it has full freedom and that as such it is not under the Government. A company has its own separate existence distinct from the shareholders, and, therefore, the fact that the entire share capital has come from the Government does not make the new bank a Government and it has a juridical personality distinct from the State; and (3) in S. 3(1)(c), the Reserve Bank of India has been specifically exempted and as nationalised banks have not been so specifically exempted, it should be taken that the Legislature has intended to cover the nationalised banks under the Shops Act.

17. As regards the first reason given above, it is no doubt true the decisions rendered while construing the scope of Art. 12 of the Constitution cannot straightaway be applied to the case on hand. But the reasoning given in these cases for holding that such statutory corporations whose entire finance came from the Central Government and whose assets and profits actually vest in the Central Government should be taken to be the agency or the instrumentality of the Government cannot be lost sight of as that is relevant for finding out whether the statutory corporations are under the Central Govt. or whether they are functioning independent of the Central Government. It is not possible, therefore, to agree with the view expressed by the Kerala High Court that the reasoning given by the Supreme Court in the decisions rendered under Art. 12 of the Constitution cannot be of any help.

18. The second reasoning is that the control of the Central Government over the nationalised banks is limited only to matters of policy as per S. 8 and beyond

that provision there is no scope for identifying the same with the Government. The nature of control or supervision which is vested with the Government can best be seen from the provisions of the statute. The learned judges of the Kerala High Court have referred only to S. 8. We have already referred to the relevant provisions of the Act which show that the entire control and not only matters of policy vests with the Government. The provision of finance, the appointment of directors, the reduction or enhancement of the capital, splitting up of one nationalised bank into various banks, or amalgamation of the various banks, and the net profit of all the nationalised banks vesting with the Government clearly indicate that the voice of the nationalised banks is the voice of the Government and their voice is that of the Central Government. We cannot, therefore, agree with the second reason given by the Kerala High Court in that case that the control is only in matters of policy and not in other respects.

19. It is also not possible to agree with the third reason that since the RBI has been specifically excluded from the purview of the act under S. 3(1)(c) of the Kerala Act and no such specific exemption has been granted to nationalised banks, the State Legislature should be taken to have not intended to exempt the nationalised banks. The argument in this connection is twofold; (1) The RBI is an establishment under the Government and if S. 3(1)(c) is intended to exempt the bank establishments under the Government such as the Reserve Bank, then no specific provision to exempt the Reserve Bank is necessary. (2) If the RBI which is an establishment under the Government requires a specific exemption, the intention of the Legislature should be taken as not to exclude the nationalised Banks from the provisions of the Act. In this connection, it should be remembered that the RBI was established under Act 2 of 1934, on March 6, 1934, as a shareholders' bank. Though the Kerala Act 34 of 1960 was enacted in the year 1960, it is almost modelled on the Tamil Nadu Shops and Establishments Act, 1947. The Tamil Nadu Shops and Establishments Act, 1947, came into force on 10th February, 1948, and S. 4(1)(c) referred to the RBI as a shareholders' bank and not as a nationalised bank. It is only after the enactment of the Reserve Bank Transfer to Public Ownership Act (Act 82 of 1948), which came into force on January 1, 1949, all the shares in the capital of that bank belonged to the Central Government and the bank came under the full and direct control of the Government. Therefore, the fact that the RBI was specifically referred to in 1947 in S. 4(1)(c) cannot be taken as a ground for saying that the nationalised banks have been understood by the Legislature as not establishments of the Central Government.

20. As already stated, the question is not whether the nationalised banks are owned by, or are departments of, the Central Government or whether the employees of the bank are the employees of the Central Government. The question is whether the nationalised banks which are statutory corporations are establishments under the Central Government. It is no doubt true that nationalised banks as statutory corporations are independent legal entities apart from the Central Government, notwithstanding the fact that such statutory

corporations are owned and financed by the Government. The fact that they have got an independent legal existence does not prevent them from being agencies or instrumentalities of the Government. If they are agencies or instrumentalities of the Government as has been held by the Supreme Court in Sukhdev Singh's case (supra), and the subsequent cases following the same, then, these statutory corporations notwithstanding their independent existence can be taken to be establishments under the Central Government, though they cannot be taken to be establishments of the Central Government. The theory of separate legal entity with power to acquire, hold and dispose of the property of a statutory corporation is relevant only for the purpose of determining whether the assets and liabilities of the corporation can be taken to be the assets and liabilities of the Government. If the assets and liabilities of a statutory corporation are taken to be that of the Government, that runs counter to the theory of a separate identity between the statutory corporation and the Government and of a statutory corporation being a separate corporation sole with a right to acquire, hold and dispose of the property. However, theory of separate legal entity does not stand in the way of the statutory corporation being under the Central Government. At this stage, it is pertinent to note the following observations of the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, .

"But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the frame work of civil service was not sufficient to handle the new tasks which were often specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilised by the Government for setting up and running public enterprises and carrying out other public functions. Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases "the true owner is the State, the real operator is the State and the effective controllorate is the State and accountability for its actions to the community and

Parliament is of the State". It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is case in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is rally the Government which acts through the instrumentality or agency of the corporation and juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government"

21. The above observations of the Supreme Court indicate that the State has started certain commercial ventures and public enterprises by using the legal contrivance of a corporation, because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the corporation. The true owner of such commercial venture or the enterprise which is actually run by the corporation is the State and the real operator and the effective controller is the State and the accountability for its actions is on the State. It is undoubtedly true that the corporation is a distinct juristic entity with a corporate is a distinct juristic entity with a corporate structure of its own and carried on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management. Having regard to the observations of the Supreme Court, it must be held that notwithstanding the distinct juristic entity with a corporate structure of its own, the corporation which is an instrumentality of the Government Should be taken to be an establishment under the Central Government. Though the said decision of the Supreme Court in *Ajay Hasia v. Khalid Mujib* (supra), has been placed before the Full Bench of the Kerala High Court, the said case has been distinguished on the ground that it dealt with the scope of Art. 12 of the Constitution.

22. In this view of the matter, I have to hold that the decision of the appellate authority in all these cases is erroneous and the petitioner-banks should be taken to be establishments under the Central Government and, as such, exempted under S. 4(1)(c) of the Tamil Nadu Shops and Establishments Act. The writ petitions are, therefore, allowed and the orders of the first respondent in W.P. No. 956 of 1979, are quashed. In other cases, writs of prohibition will issue. There is no order as to costs.