(2016) 08 GUJ CK 0095

In the Gujarat High Court

Case No : Special Civil Application No. 5401 of 2007

Valsad District Central Co. Op. Bank Ltd. APPELLANT

Vs

Bhaskar Y. Mehta RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Constitution of India, 1950 — Article 12, Article 162, Article 19(1)(c)
Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 — Section 2(k), Section 47, Section 62

Citation : (2017) LIC 1665

Hon'ble Judges : Mr. J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Mr. B.M. Mangukiya, Advocate, for the Petitioner No. 1; Ms. Manisha Lavkumar Shah, Government Pleader, for the Respondent No. 1; Mr. K.R. Koshti, Advocate, for the Respondent No. 2; Rule Served, for the Respondent No. 1 and 2

Final Decision : Dismissed

Judgement

Mr. J.B. Pardiwala, J. (Oral)—By this writ-application under Article 226 of the Constitution of India, the writ-applicant, a Cooperative Bank registered under the Gujarat Cooperative Societies Act, 1961 (for short, ''the Act, 1961''), calls in question the legality and validity of the order dated 1st December 2006 passed by the Commissioner for the Handicapped Persons in Case No.221 of 2006 in exercise of his powers under Section 62 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, ''the Act, 1995).

2. The case of the writ-application may be summarised as under :

The writ-applicant is a Cooperative Society registered under the provisions of the Act, 1961. The respondent no.2 was appointed as a Clerk in the year 1979 with the writ-applicant Bank. On 15th August 2003, while travelling with his family to Nasik in his car bearing registration no. GJ-15-K-920, he met with an accident. The accident resulted in 75% physical disability rendering the respondent no.2

''unfit'' to follow his normal pursuits. As the respondent no.2 was unable to speak or write properly, he made a request to the Bank to transfer him to a branch situated closer to his residence. The respondent no.2 was accordingly transferred on 8th April 2004 to the Pardi branch of the Bank. The Bank permitted the respondent no.2 to function upto 29th July 2005 at the Pardi branch. The Bank, having regard to the physical condition of the respondent no.2, stopped paying the salary and did not allow the respondent no.2 to work. The respondent no.2 preferred a complaint under Section 62 of the Act, 1995 as regards the violation of the provisions of Section 47 of the Act, 1995. The complaint culminated in Case No.221 of 2006 in the Court of the Commissioner for the Handicapped Persons. The Commissioner, vide order dated 1st December 2006, allowed the complaint filed by the respondent no.2 and declared that the Bank was obliged to grant all the benefits to the respondent no.2 in terms of Section 47 of the Act, 1995.

3. Being dissatisfied, the Bank has come up with this writ-application.

4. It appears that on 13th June 2007 notice was ordered to be issued to the respondents and ad-interim relief in terms of para 26(c) was granted. On 1st August 2007, the following order was passed :

"Heard Ms. Bela Prajapati for Mr. Mangukia, learned counsel for the petitioner and Mr. Koshti, learned counsel for the respondent No. 2.

As the definition of ''Establishment'' in The Person with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, prima-facie does not seems to be encompassing the petitioner Bank and therefore, Rule returnable on 21.9.2007. Ad-interim relief granted earlier to continue till then."

5. Mr.Mangukiya, the learned counsel appearing for the Bank, vehemently submitted that the Commissioner committed a serious error of law in passing the impugned order. According to Mr.Mangukiya, the Bank would not fall within the ambit of the definition ''establishment'' as defined under Section 2(k) of the Act, 1995. He would submit that the Bank is not a ''corporation established by or under a Central, Provincial or State Act''. According to him, the Bank is not even an ''authority or a body owned or controlled or aided by the Government or a local authority. In such circumstances, according to Mr.Mangukiya, the complaint under Section 62 of the Act, 1995, was not maintainable against the Bank for the alleged violation of the provisions of Section 47 of the Act, 1995. He prays that there being merit in this writ-application, the same may be allowed and the impugned order be quashed.

6. On the other hand, this writ-application has been vehemently opposed by Mr.Koshti, the learned counsel appearing for the respondent no.2. Mr.Koshti would submit that the Bank falls within the ambit of the term ''establishment'' as defined under Section 2(k) of the Act, 1995, as it is a ''body'' controlled by the Registrar, Cooperative Societies, State of Gujarat. He submits that no error, not to speak of any error of law, could be said to have been committed by the

Commissioner in passing the impugned order. Relying on the decision of the Supreme Court in the case of S.M. Nilajkar and others v. Telecom District Manager, Karnataka, (2003)4 SCC 27, he submitted that the Act, 1995 being a benevolent piece of legislation should be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. He would submit that the writ-applicant being a cooperative bank is directly under the overall control of the Registrar, Cooperative Societies, appointed by the State of Gujarat. Mr.Koshti also seeks to rely on the following averments made in the affidavit-in-reply filed on behalf of the respondent no.2 :

"5. With reference to the contents of para 19 of the petition, I submit that the facts stated therein are not true and I deny the same. It is submitted that as per Section 47 of the Persons with Disability (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 which provides equal opportunity and protection of rights and full participation of the persons who acquired disability during tenure of their service. It is submitted that, in the instant case, respondent no.2 has got disability during tenure of his service. Therefore, respondent no.2 be shifted to some other post with the same pay-scale and service benefits. The provision of the said Section also provides that no promotion shall be denied to a person merely on the ground of his disability. Therefore also, the contention raised in the para under reference is of no avail, and, therefore, the same is required to be rejected.

6. With reference to the contents of para 20 of the petition, I submit that the facts stated therein are not true and I deny the same. It is submitted that as per Section 2(k) of the Act which defines the term ''establishment'' is clearly applicable to the petitioner bank because the language employed in the said Section and the fact that the bank was registered under the provisions of the Gujarat Co-operative Societies Act, 1961 and the Registrar, Co-operative Societies, Gujarat State who looks after the affairs of the cooperative societies is appointed by the State Government and the petitioner bank is doing the banking business under the Banking Regulation Act, 1949. Therefore, the petitioner bank is squarely covered under the definition of the term ''establishment'' and the said Act is also applicable to the petitioner bank. Therefore, the contention raised in the para under reference is of no avail. Therefore, the same is required to be rejected in the interest of justice.

7. With reference to the contents of para 21 of the petition, I submit that the facts stated therein are not true and I deny the same. It is submitted that since the petitioner bank was registered under the Gujarat Cooperative Societies Act, 1961 which was enacted by the State Government and the Registrar, Cooperative Societies, Gujarat State who looks after the affairs of the Cooperative Societies is appointed by the Sate Government and as per the language employed in Section 2(k), the petitioner bank is covered under the definition of ''establishment''. Therefore, the order passed by the authority concerned is valid, just, legal, proper and in accordance with law. Therefore, it does not call for any interference

by this Honourable Court in a petition under Article 227 of the Constitution of India.

8. With reference to the contents of para 22 of the petition, I submit that the facts stated therein are not true and I deny the same. Taking into consideration the scheme and object of the Persons with Disability (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 which provides to give effect to the proclamation on the full participation and equality to the people with disability in the Asian and Pacific region. The authority concerned has passed the said order and it is the legal duty of the petitioner bank to implement the same without any delay. It is further submitted that the Gujarat Cooperative Societies Act, 1961 under which the petitioner bank was registered and, therefore, the said Act is applicable to the petitioner bank as per the provisions of Section 47 of the Act and looking to the definition of Section 2(k) of the Act, the petitioner bank is an establishment. Therefore, the order passed by respondent no.1 herein is just, proper and valid and, therefore, it does not call for any interference by this Honourable Court in a petition under Article 227 of the Constitution of India."

7. In such circumstances referred to above, Mr.Koshti prays that there being no merit in this writ-application, the same may be rejected.

8. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the Central Cooperative Bank registered under the Gujarat Cooperative Societies Act falls within the ambit of the term ''establishment'' as defined under Section 2(k) of the Act, 1995.

9. Before adverting to the rival submissions canvassed on either sides, let me look into the provisions of the Act, 1995. Section 2(k) defines ''establishment. It reads as under :

"2. Definitions.—In this Act, unless the context otherwise requires, -

*** *** ***

(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controller or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Department of a Government;"

10. Section 47 is with regard to non-discrimination in Government employments. It reads as under :

"47. Non-discrimination in Government employment

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may having regard to the type of work carried on in any establishment by notification and subject to such conditions if any as may be specified in such notification exempt any establishment from the provisions of this section."

11. Section 62 is with regard to the powers of the Commissioner to look into the complaints. Section 62 reads as under :

"62. Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities-

Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to-

(a) deprivation of rights of persons with disabilities;

(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities. and take up the matter with the appropriate authorities."

12. The Supreme Court in the case of Thalappalam Ser Coop Bank Ltd and others v. State of Kerala and others, (2013)16 SCC 82, had the occasion to consider the question, whether a cooperative society registered under the Kerala Cooperative Societies Act, 1969, would fall within the definition of ''public authority'' under Section 2(h) of the Right to Information Act. While answering the question in the negative, the Supreme Court considered the cooperative societies vis-a-vis Article 12 of the Constitution of India. The observations made from paragraphs 13 to 18 are relevant. Those are elicited as under :

"13. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression "State" within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution. This Court in U.P. State Co-operative Land Development Bank Limited v. Chandra Bhan Dubey and others (1999) 1 SCC 741 : (AIR 1999 SC 753) : (1999 AIR SCW 364), while dealing with the question of the maintainability of the writ petition against the U.P. State Co-operative Development Bank Limited held the same as an instrumentality of the State and an authority mentioned in Article 12 of the Constitution. On facts, the Court noticed that the control of the State Government on the Bank is all pervasive and that the affairs of the Bank are controlled by the State Government though it is functioning as a co-operative society, it is an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. In All India Sainik Schools employees'' Association v. Defence Minister-cum-Chairman, Board of Governors, Sainik Schools Society, New Delhi and others (1989) Supplement 1 SCC 205 : (AIR 1989 SC 88), this Court held that the Sainik School society is "State" within the meaning of Article 12 of the Constitution after having found that the entire funding is by the State Government and by the Central Government and the overall control vests in the governmental authority and the main object of the society is to run schools and prepare students for the purpose feeding the National Defence Academy.

14. This Court in Executive Committee of Vaish Degree College, Shamli and others v. Lakshmi Narain and Others (1976) 2 SCC 58 : (AIR 1976 SC 888), while dealing with the status of the Executive Committee of a Degree College registered under the Co-operative Societies Act, held as follows:

"10.........It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character.........."

15. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Co-operative Societies or State Government.

16. This Court in Federal Bank Ltd. v. Sagar Thomas and others (2003) 10 SCC 733 : (AIR 2003 SC 4325) : (2003 AIR SCW 4995), held as follows:

"32..Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority".

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the cooperative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in S.S. Rana v. Registrar, Co-operative Societies and another (2006) 11 SCC 634 : (2006 AIR SCW 3723). In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Cooperative Societies Act this Court held as follows:

"9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other co-operative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the co-operative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority

Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterised as public authority?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control there over would mean that the same satisfies the tests laid down by this Court in Ajay Hasia v. Khalid Mujib Sehravardi (AIR 1981 SC 487). [See Zoroastrian Co-op. Housing Society Ltd. v. Distt. Registrar, Co-op. Societies (Urban) (2005 AIR SCW 2317).]

12. It is well settled that general regulations under an Act, like the Companies Act or the Co-operative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions."

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment."

13. The Supreme Court thereafter considered the constitutional provisions vis-a-vis cooperative autonomy. The observations made from paragraphs 19 to 23 are relevant. Those are elicited as under :

"19. Rights of the citizens to form co-operative societies voluntarily, is now raised to the level of a fundamental right and State shall endeavour to promote their autonomous functioning. The Parliament, with a view to enhance public faith in the co-operative institutions and to insulate them to avoidable political or bureaucratic interference brought in Constitution (97th Amendment) Act, 2011, which received the assent of the President on 12.01.2012, notified in the Gazette of India on 13.01.2012 and came into force on 15.02.2012.

20. Constitutional amendment has been effected to encourage economic activities of co-operatives which in turn help progress of rural India. Societies are expected not only to ensure autonomous and democratic functioning of co-operatives, but also accountability of the management to the members and other share stakeholders. Article 19 protects certain rights regarding freedom of speech. By virtue of above amendment under Article 19(1)(c) the words "co-operative societies" are added. Article 19(1)(c) reads as under :-

"19(1)(c) - All citizens shall have the right to form associations or unions or co-operative societies".

Article 19(1)(c), therefore, guarantees the freedom to form an association, unions and co-operative societies. Right to form a co-operative society is, therefore, raised to the level of a fundamental right, guaranteed under the Constitution of India. Constitution 97th Amendment Act also inserted a new Article 43B with reads as follows :-

"the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies".

21. By virtue of the above-mentioned amendment, Part IX-B was also inserted containing Articles 243ZH to 243ZT. Co-operative Societies are, however, not treated as units of self-government, like Panchayats and Municipalities.

22. Article 243(ZL) dealing with the supersession and suspension of board and interim management states that notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months. It provided further that the Board of any such co-operative society shall not be superseded or kept under suspension where there is no government shareholding or loan or financial assistance or any guarantee by the Government. Such a constitutional restriction has been placed after recognizing the fact that there are cooperative societies with no government share holding or loan or financial assistance or any guarantee by the government.

23. Co-operative society is a State subject under Entry 32 List I(II) Seventh Schedule to the Constitution of India. Most of the States in India enacted their own Cooperative Societies Act with a view to provide for their orderly development of the co-operative sector in the State to achieve the objects of equity, social justice and economic development, as envisaged in the Directive Principles of State Policy, enunciated in the Constitution of India. For co-operative societies working in more than one State, The Multi State Co-operative Societies Act, 1984 was enacted by the Parliament under Entry 44 List I of the Seventh Schedule of the Constitution. Co-operative society is essentially an association or an association of persons who have come together for a common purpose of economic development or for mutual help."

14. Thereafter, the Supreme Court considered the expression ''body owned, controlled or substantially financed''. The observations in this regard as contained in paragraphs 27 to 38 are relevant. Those are elicited as under :

"27. Legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions ''means'' and includes''. When a word is defined to ''mean'' something, the definition is prima facie restrictive and where the word is defined to ''include'' some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. Meanings of the expressions ''means'' and ''includes'' have been explained by this Court in Delhi Development Authority v. Bhola Nath Sharma (Dead) by LRs. and others (2011) 2 SCC 54 : (AIR 2011 SC 428) : (2011 AIR SCW 3897), (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

28. Section 2(h) exhausts the categories mentioned therein. The former part of Section 2(h) deals with :

(1) an authority or body of self-government established by or under the Constitution,

(2) an authority or body or institution of self-government established or constituted by any other law made by the Parliament,

(3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.

29. Societies, with which we are concerned, admittedly, do not fall in the above-mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold:

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,

(6) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate government.

30. The expression ''Appropriate Government'' has also been defined under Section 2(a) of the RTI Act, which reads as follows :-

"2(a). "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-

(i) by the Central Government or the Union territory administration, the Central Government;

(ii) by the State Government, the State Government."

31. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organisations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h) (d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of public authority under Section 2(h)d (i) or (ii).

(a) Body owned by the Appropriate Government - A body owned by the appropriate government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate government.

(b) Body Controlled by the Appropriate Government - A body which is controlled by the appropriate government can fall under the definition of public authority under Section 2(h)(d)(i). Let us examine the meaning of the expression "controlled" in the context of RTI Act and not in the context of the expression "controlled" judicially interpreted while examining the scope of the expression "State" under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word "control" or "controlled" has not been defined in the RTI Act, and hence, we have to understand the scope of the expression ''controlled'' in the context of the words which exist prior and subsequent i.e. "body owned" and "substantially financed" respectively. The meaning of the word "control" has come up for consideration in several cases before this Court in different contexts. In State of West Bengal and another v. Nripendra Nath Bagchi, AIR 1966 SC 447 while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word "control" includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations :-

"The word ''control'', as we have seen, was used for the first time in the Constitution and it is accompanied by the word ''vest'' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, ..."

32. The above position has been reiterated by this Court in Chief Justice of Andhra Pradesh and others v. L.V.A. Dixitulu and others (1979) 2 SCC 34 : (AIR 1979 SC 193). In Corporation of the City of Nagpur Civil Lines, Nagpur and another v. Ramchandra and others (1981) 2 SCC 714 : (AIR 1984 SC 626), while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows :

"4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers-vested in the authority concerned......."

33. The word "control" is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. This Court in The Shamrao Vithal Co-operative Bank Ltd. v. Kasargode Pandhuranga Mallya (1972) 4 SCC 600, held that the word "control" does not comprehend within itself the adjudication of a claim made by a co-operative society against its members. The meaning of the word "control" has also been considered by this Court in State of Mysore v. Allum Karibasappa and Ors. (1974) 2 SCC 498 : (AIR 1974 SC 1863), while interpreting Section 54 of the Mysore Co-operative Societies Act, 1959 and Court held that the word "control" suggests check, restraint or influence and intended to regulate and hold in check and restraint from action. The expression "control" again came up for consideration before this Court in Madan Mohan Choudhary v. State of Bihar and Ors. (1999) 3 SCC 396 : (AIR 1999 SC 1018) : (1999 AIR SCW 648), in the context of Article 235 of the Constitution and the Court held that the expression "control" includes disciplinary control, transfer, promotion, confirmation, including transfer of a District Judge or recall of a District Judge posted on ex-cadre post or on deputation or on administrative post etc. so also premature and compulsory retirement. Reference may also be made to few other judgments of this Court reported in Gauhati High Court and another v. Kuladhar Phukan and another (2002) 4 SCC 524 : (AIR 2002 SC 1589) : (2002 AIR SCW 1492), State of Haryana v. Inder Prakash Anand HCS and others (1976) 2 SCC 977 : (AIR 1976 SC 1841), High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and another (1998) 3 SCC 72 : (AIR 1998 SC 1079) : (1998 AIR SCW 867), Kanhaiya Lal Omar v. R.K.Trivedi and others (1985) 4 SCC 628 : (AIR 1986 SC 111), TMA Pai Foundation and others v. State of Karnataka (2002) 8 SCC 481, Ram Singh and others v. Union Territory, Chandigarh and others (2004) 1 SCC 126 : (AIR 2004 SC 969) : (2003 AIR SCW 6567), etc.

34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere ''supervision'' or ''regulation'' as such by a statute or otherwise of a body would not make that body a "public authority" within the

meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Co-operative Societies and others under the Co-operative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Co-operative Societies Act and not on the authorities under the Cooperative Societies Act.

35. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used visa- vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

Substantially Financed

36. The words "substantially financed" have been used in Sections 2(h)(d)(i) and (ii), while defining the expression public authority as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression "substantially financed", as such, has not been defined under the Act. "Substantial" means "in a substantial manner so as to be substantial". In Palser v. Grimling (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that "substantial" is not the same as "not unsubstantial" i.e. just enough to avoid the de minimis principle. The word "substantial" literally means solid, massive etc. Legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.

37. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In Black''s Law Dictionary (6th Edn.), the word ''substantial'' is defined as ''of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.'' The word ''substantially'' has been defined to mean ''essentially; without material qualification; in the main; in substance; materially.'' In the Shorter Oxford English Dictionary (5th Edn.), the word ''substantial'' means ''of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act,

measure etc. having force or effect, effective, thorough.'' The word ''substantially'' has been defined to mean ''in substance; as a substantial thing or being; essentially, intrinsically.'' Therefore the word ''substantial'' is not synonymous with ''dominant'' or ''majority''. It is closer to ''material'' or ''important'' or ''of considerable value.'' ''Substantially'' is closer to ''essentially''. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(h)(d) (i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent. grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i)."

15. The Supreme Court, thereafter, considered the case as regards the Non-Government Organisations. The observations in paragraph 39 are relevant. Those are elicited as under :

"39. The term "Non-Government Organisations" (NGO), as such, is not defined under the Act. But, over a period of time, the expression has got its own meaning and, it has to be seen in that context, when used in the Act. Government used to finance substantially, several non-government organisations, which carry on various social and welfare activities, since those organisations sometimes carry on functions which are otherwise governmental. Now, the question, whether an NGO has been substantially financed or not by the appropriate Government, may be a question of fact, to be examined by the authorities concerned under the RTI Act. Such organization can be substantially financed either directly or indirectly by funds provided by the appropriate Government. Government may not have any statutory control over the NGOs, as such, still it can be established that a particular NGO has been substantially financed directly or indirectly by the funds provided by the appropriate Government, in such an event, that organization will fall within the scope of Section 2(h)(d)(ii) of the RTI Act. Consequently, even private organisations which are, though not owned or controlled but substantially financed by the appropriate Government will also fall within the definition of "public authority" under Section 2(h)(d)(ii) of the Act."

16. The Supreme Court, thereafter, proceeded to explain that the burden to show that a body is owned, controlled or substantially financed or that a Non-Government Organisation is substantially financed either directly or indirectly by the funds provided by the appropriate Government, is on the applicant who

seeks information. The observations in that regard are to be found from paragraphs 40 to 51, which reads thus :

"40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Public Information Officer, State Chief Information Officer, State Chief Information Commissioner, Central Public Information Officer etc., when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

41. Powers have been conferred on the Central Information Commissioner or the State Information Commissioner under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be, in each public authority. Therefore, there is inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority.

42. Legislative intention is clear and is discernible from Section 2(h) that intends to include various categories, discussed earlier. It is trite law that the primarily language employed is the determinative factor of the legislative intention and the intention of the legislature must be found in the words used by the legislature itself. In Magor and St. Mellons Rural District Council v. New Port Corporation (1951) 2 All ER 839(HL) stated that the courts are warned that they are not entitled to usurp the legislative function under the guise of interpretation. This Court in D.A. Venkatachalam and others v. Dy. Transport Commissioner and others (1977) 2 SCC 273 : (AIR 1977 SC 842), Union of India v. Elphinstone Spinning and Weaving Co. Ltd. and others (2001) 4 SCC 139 : (AIR 2001 SC 724) : (2001 AIR SCW 364), District Mining Officer and others v. Tata Iron and Steel Co. and another (2001) 7 SCC 358 : (AIR 2001 SC 3134) : (2001 AIR SCW 2927), Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others (2002) 3 SCC 533 : (AIR 2002 SC 1334) : (2002 AIR SCW 1156); Maulvi Hussain Haji Abraham Umarji v. State of Gujarat and another (2004) 6 SCC 672 : (AIR 2004 SC 3946) : (2004 AIR SCW 4396) held that the court must avoid the danger of an apriori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provisions to be interpreted is somehow fitted. It is trite law that words of a

statute are clear, plain and unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences, meaning thereby when the language is clear and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the statute speaks for itself. This Court in Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907 held that "if the words used are capable of one construction only then it would not be open to courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

43. We are of the view that the High Court has given a complete go-bye to the above-mentioned statutory principles and gone at a tangent by mis-interpreting the meaning and content of Section 2(h) of the RTI Act. Court has given a liberal construction to expression "public authority" under Section 2(h) of the Act, bearing in mind the "transformation of law" and its "ultimate object" i.e. to achieve "transparency and accountability", which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that RTI Act will certainly help as a protection against the mismanagement of the society by the managing committee and the society''s liabilities and that vigilant members of the public body by obtaining information through the RTI Act, will be able to detect and prevent mismanagement in time. In our view, the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression "public authority" to bring in other categories into its fold, which do not satisfy the tests we have laid down. Court cannot, when language is clear and unambiguous, adopt such a construction which, according to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states "unless the context otherwise requires". No materials have been made available to show that the co-operative societies, with which we are concerned, in the context of the Act, would fall within the definition of Section 2(h) of the Act.

Right to Information and the Right to Privacy

44. People''s right to have access to an official information finds place in Resolution 59(1) of the UN General Assembly held in 1946. It states that freedom of information is a fundamental human right and the touchstone to all the freedoms to which the United Nations is consecrated. India is a party to the International Covenant on Civil and Political Rights and hence India is under an obligation to effectively guarantee the right to information. Article 19 of the Universal Declaration of Human Rights also recognises right to information. Right to information also emanates from the fundamental right guaranteed to citizens under Article 19(1) (a) of the Constitution of India. Constitution of India does not explicitly grant a right to information. In Bennet Coleman and Co. and others v. Union of India and others (1972) 2 SCC 788 : (AIR 1973 SC 106), this Court observed that it is indisputable that by "Freedom of Press" meant the right of all

citizens to speak, publish and express their views and freedom of speech and expression includes within its compass the right of all citizens to read and be informed. In Union of India v. Association of Democratic Reforms and another (2002) 5 SCC 294 : (AIR 2002 SC 2112) : (2002 AIR SCW 2186), this Court held that the right to know about the antecedents including criminal past of the candidates contesting the election for Parliament and State Assembly is a very important and basic facets for survival of democracy and for this purpose, information about the candidates to be selected must be disclosed. In State of U.P. v. Raj Narain and others (1975) 4 SCC 428 : (AIR 1975 SC 865), this Court recognised that the right to know is the right that flows from the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. In People''s Union for Civil Liberties (PUCL) and others v. Union of India and another (2003) 4 SCC 399 : (AIR 2003 SC 2363) : (2003 AIR SCW 2353), this Court observed that the right to information is a facet of freedom of speech and expression contained in Article 19(1)(a) of the Constitution of India. Right to information thus indisputably is a fundamental right, so held in several judgments of this Court, which calls for no further elucidation.

45. The Right to Information Act, 2005 is an Act which provides for setting up the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. Preamble of the Act also states that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Citizens have, however, the right to secure access to information of only those matters which are "under the control of public authorities", the purpose is to hold "Government and its instrumentalities" accountable to the governed. Consequently, though right to get information is a fundamental right guaranteed under Article 19(1)(a) of the Constitution, limits are being prescribed under the Act itself, which are reasonable restrictions within the meaning of Article 19(2) of the Constitution of India.

46. Right to privacy is also not expressly guaranteed under the Constitution of India. However, the Privacy Bill, 2011 to provide for the right to privacy to citizens of India and to regulate the collection, maintenance and dissemination of their personal information and for penalization for violation of such rights and matters connected therewith, is pending. In several judgments including Kharak Singh v. State of U.P. and others, AIR 1963 SC 1295, R. Rajagopal alias R.R. Gopal and another v. State of Tamil Nadu and others (1994) 6 SCC 632 : (AIR 1995 SC 264) : (1995 AIR SCW 4420), People''s Union for Civil Liberties (PUCL) v. Union of India and another (1997) 1 SCC 301 : (AIR 1997 SC 568) : (1997 AIR SCW 113) and State of Maharashtra v. Bharat Shanti Lal Shah and others (2008) 13 SCC 5 : (AIR 2009 SC (Supp) 1135) : (2008 AIR SCW 6431), this Court has recognised the right to privacy as a fundamental right emanating from Article 21 of the Constitution of India. Right to privacy is also recognised as a

basic human right under Article 12 of the Universal Declaration of Human Rights Act, 1948, which states as follows :-

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honour and reputation. Everyone has the right to the protection of law against such interference or attacks."

Article 17 of the International Covenant on Civil and Political Rights Act, 1966, to which India is a party also protects that right and states as follows :-

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honour and reputation...."

This Court in R. Rajagopal (AIR 1995 SC 264) : (1995 AIR SCW 4420) (supra) held as follows (Para 28 of AIR) :-

"The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters."

Restrictions and Limitations:

47. Right to information and Right to privacy are, therefore, not absolute rights, both the rights, one of which falls under Article 19(1)(a) and the other under Article 21 of the Constitution of India, can obviously be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State. Citizens'' right to get information is statutorily recognised by the RTI Act, but at the same time limitations are also provided in the Act itself, which is discernible from the Preamble and other provisions of the Act. First of all, the scope and ambit of the expression "public authority" has been restricted by a statutory definition under Section 2(h) limiting it to the categories mentioned therein which exhaust itself, unless the context otherwise requires. Citizens, as already indicated by us, have a right to get information, but can have access only to the information "held" and under the "control of public authorities", with limitations. If the information is not statutorily accessible by a public authority, as defined in Section 2(h) of the Act, evidently, those information will not be under the "control of the public authority". Resultantly, it will not be possible for the citizens to secure access to those information which are not under the control of the public authority. Citizens, in that event, can always claim a right to privacy, the right of a citizen to access information should be respected, so also a citizen''s right to privacy.

48. Public authority also is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under clause (j) of sub-section (1) of Section 8. Section 8(1)(j) is of considerable importance so far as this case is concerned, hence given below, for ready reference :-

"8. Exemption from disclosure of information - (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen -

(a) to (i) xxx xxx xxx

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

49. Section 8 begins with a non-obstante clause, which gives that Section an overriding effect, in case of conflict, over the other provisions of the Act. Even if, there is any indication to the contrary, still there is no obligation on the public authority to give information to any citizen of what has been mentioned in clauses (a) to (j). Public authority, as already indicated, cannot access all the information from a private individual, but only those information which he is legally obliged to pass on to a public authority by law, and also only those information to which the public authority can have access in accordance with law. Even those information, if personal in nature, can be made available only subject to the limitations provided in Section 8(j) of the RTI Act. Right to be left alone, as propounded in Olmstead v. The United States, reported in 1927 (277) US 438 is the most comprehensive of the rights and most valued by civilized man.

50. Recognizing the fact that the right to privacy is a sacrosanct facet of Article 21 of the Constitution, the legislation has put a lot of safeguards to protect the rights under Section 8(j), as already indicated. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the public authority or the officer concerned is not legally obliged to provide those information. Reference may be made to a recent judgment of this Court in Girish Ramchandra Deshpande v. Central Information Commissioner and others (2013) 1 SCC 212 : (2012 AIR SCW 5865), wherein this Court held that since there is no bona fide public interest in seeking information, the disclosure of said information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the Act. Further, if the authority finds that information sought for can be made available in the larger public interest, then the officer should record his reasons in writing before providing the information, because the person from whom information is sought for, has also a right to privacy guaranteed under Article 21 of the Constitution.

51. We have found, on facts, that the Societies, in these appeals, are not public authorities and, hence, not legally obliged to furnish any information sought for by a citizen under the RTI Act. All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information

Officer can examine the same and find out whether the Society in question satisfies the test laid in this judgment. Now, the next question is whether a citizen can have access to any information of these Societies through the Registrar of Co-operative Societies, who is a public authority within the meaning of Section 2(h) of the Act."

17. In the last, the Supreme Court considered the functions of the Registrar of the Cooperative Societies under the Cooperative Societies Act. The observations in paragraphs 52 to 54 are relevant. Those are elicited as under :

"52. Registrar of Co-operative Societies functioning under the Co-operative Societies Act is a public authority within the meaning of Section 2(h) of the Act. As a public authority, Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. Information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Co-operative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Co-operative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a co-operative bank. Only those information which a Registrar of Co-operative Societies can have access under the Co-operative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

53. Consequently, an information which has been sought for relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

54. We, therefore, hold that the Co-operative Societies registered under the

Kerala Co-operative Societies Act will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act and the State Government letter dated 5.5.2006 and the circular dated 01.06.2006 issued by the Registrar of Co-operative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Co-operative Societies Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. Appeals are, therefore, allowed as above, however, with no order as to costs."

18. Thus, the judgment referred to above makes it abundantly clear that although the societies like the writ-applicant herein is subject to the control of the statutory authorities like the Registrar, Joint Registrar, Government etc., yet it cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. The supervisory or general regulations under the statute over the cooperative societies, which are body corporate, does not render the activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the ''State'' or ''Instrumentality of the State''.

19. In my view, a cooperative bank registered under the Gujarat Cooperative Societies Act would not fall within the ambit of the term ''establishment'' as defined under Section 2(k) of the Act, 1995. If that be so, then there is no question of filing any complaint under Section 62 of the Act, 1995, as regards the breach of the provisions of Section 47 of the Act, 1995.

20. The Supreme Court in the case of Dalco Engineering Private Limited v. Satish Prabhakar Padhye and others, (2010)4 SCC 378, had the occasion to consider Section 47 of the Act, 1995, vis-a-vis Section 2(k) of the Act, 1995, which defines the term ''establishment'' employed in Section 47 of the Act, 1995. In paragraph 11 of the decision, the Court framed two questions for its consideration. Para 11 reads as under :

"11. The question is, having regard to the definition of the word ''establishment'' by section 2(k) of the Act, whether the requirement relating to non-discrimination of employees acquiring a disability during the course of service, embodied in Section 47, is to be complied with only by authorities falling within the definition of State (as defined in Article 12 of the Constitution), or even by private employers. This leads us to the following two questions:-

(i) Whether a company incorporated under the Companies Act (other than a Government company as defined in section 617 of the Companies Act, 1956) is an "establishment" as defined in section 2(k) of the Act ?

(ii) Whether the respondent in the first case and the appellant in the second case are entitled to claim any relief with reference to section 47 of the Act ?"

21. Thereafter, in paragraph 12, the Court considered the definition of the term ''establishment'' in Section 2(k). The observations of the Supreme Court as

contained from paragraphs 12 to 34 are relevant. Those are elicited as under :

"12. Let us examine the meaning of the crucial word ''establishment'' used in sub-section (1) of section 47 of the Act. The definition of the word ''establishment'' in section 2(k), when analysed, shows that it is an exhaustive definition, and covers the following categories of employers:

(i) a corporation established by or under a Central, Provincial, or State Act;

(ii) an authority or a body owned or controlled or aided by the Government;

(iii) a local authority;

(iv) a Government company as defined in Section 617 of the Companies Act, 1956; and

(v) Departments of a Government.

13. It is not in dispute that the employers in these two cases are companies incorporated under the Companies Act, 1956 which do not fall under categories (ii) to (v) specified in Section 2(k) of the Act.

14. The employee contends that a company incorporated under the Companies Act is a Corporation falling under the first category enumerated in section 2(k), that is ''Corporation established by or under a Central, Provincial or State Act'', on the following reasoning : that a corporation refers to a company; that Companies Act is a Central Act; and that therefore a company incorporated and registered under the Companies Act is a Corporation established under a Central Act. He contends that the use of the words "by or under" is crucial. According to him, ''a corporation established by an Act'' would refer to a corporation brought into existence by an Act; and a ''corporation established under an Act'' would refer to a company incorporated under the Companies Act.

15. On the other hand, the employer contends that the term ''Corporation established by or under a Central, Provincial or State Act'' refers to a statutory Corporation which is brought into existence by a statute, or under a statute and does not include a company which is registered under the Companies Act. It is submitted that Companies Act merely facilitates and lays down the procedure for incorporation of a company which, when incorporated, will be governed by the provisions of the said Act and therefore, a company registered under the Companies Act, is not a corporation established under an Act.

16. The words "a Corporation established by or under a Central, Provincial or State Act" is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under statute. For example, it is used in sub-clause (b) of Clause Twelfth of Section 21 of the Indian Penal Code (''IPC'' for short) and Section 2(c)(iii) of the Prevention of Corruption Act, 1988 (''PC Act'' for short). Both these statutes provide that a person in the service of a ''Corporation established by or under a Central, Provincial or State Act'' is a public servant.

17. The Prevention of Damage to Public Property Act, 1984 defines ''public property'' as meaning any property owned by, or in the possession of, or under the control of (i) the Central Government (ii) any State Government; or (iii) any local authority; or (iv) any corporation established by, or under, a Central, Provincial or State Act; or (v) any company as defined in Section 617 of the Companies Act, 1956; or (vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in that behalf provided that the Central Government shall not specify any institution, concern or undertaking under that sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments. Thus the term is always used to denote certain categories of authorities which are ''State'' as contrasted from non-statutory companies which do not fall under the ambit of ''State''.

18. The meaning of the term came up for consideration in S. S. Dhanoa v. Municipal Corporation, Delhi and Ors., 1981 (3) SCC 431 : (AIR 1981 SC 1395) with reference to section 21 of IPC. This Court held:

"7. Clause Twelfth does not use the words "body corporate", and the question is whether the expression "corporation" contained therein, taken in collocation of the words "established by or under a Central, Provincial or State Act" would bring within its sweep a co-operative society. Indubitably, the Co-operative Store Limited is not a corporation established by a Central or State Act. The crux of the matter is whether the word ''under'' occurring in Clause Twelfth of Section 21 of the Indian Penal Code makes a difference. Does the mere act of incorporation of a body or society under a Central or a State Act make it a corporation within the meaning of Clause Twelfth of Section 21. In our opinion, the expression ''corporation'' must, in the context, mean a corporation created by the Legislature and not a body or society brought into existence by an act of a group of individuals. A cooperative society is, therefore, not a corporation established by or under an Act of the Central or State Legislature.

8. A corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership.........The term ''corporation'' is, therefore, wide enough to include private corporations. But, in the context of Clause Twelfth of Section 21 of the Indian Penal Code, the expression ''corporation'' must be given a narrow legal connotation.

9. Corporation, in its widest sense, may mean any association of individuals entitled to act as an individual. But that certainly is not the sense in which it is used here. Corporation established by or under an Act of Legislature can only mean a body corporate which owes its existence, and not merely its corporate status, to the Act. For example, a Municipality, a Zilla Parishad or a Gram

Panchayat owes its existence and status to an Act of Legislature. On the other hand, an association of persons constituting themselves into a Company under the Companies Act or a Society under the Societies Registration Act owes its existence not to the Act of Legislature but to acts of parties though, it may owe its status as a body corporate to an Act of Legislature.

10. There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by this Court in Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Ors, (1975) 1 SCC 421 : (AIR 1975 SC 1331). It was observed :

"25. ..A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act."

There is thus a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute."

19. In Executive Committee of Vaish Degree College v. Lakshmi Narain, 1976 (2) SCC 58 : (AIR 1976 SC 888), this Court explained the position further:

"10...n other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such case to be asked is, if there is no statute, would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body."

20. A ''company'' is not ''established'' under the Companies Act. An incorporated company does not ''owe'' its existence to the Companies Act. An incorporated company is formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a Memorandum of Association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a ''company'' is incorporated and registered under, the Companies Act and not established under the Companies Act. Per contra, the Companies Act itself establishes the National Company Law Tribunal and National Company Law Appellate Tribunal, and those two statutory authorities owe their existence to the Companies Act.

21. Where the definition of ''establishment'' uses the term ''a corporation established by or under an Act'', the emphasis should be on the word ''established'' in addition to the words ''by or under''. The word ''established'' refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between

''established by a Central Act'' and ''established under a Central Act''?

22. The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of State Bank of India Act, 1955 provides that a Bank to be called the State Bank of India shall be constituted to carry on the business of banking. Section 3 of Life Insurance Corporation Act, 1956 provides that with effect from such date as the Central Government may by notification in the Official Gazette appoint, there shall be established a corporation called the Life Insurance Corporation of India.

State Bank of India and Life Insurance Corporation of India are two examples of corporations established by "a Central Act".

23. We may next refer to the State Financial Corporation Act, 1951 which provides for establishment of various Financial Corporations under that Act. Section 3 of that Act relates to establishment of State Financial Corporations and provides that the State Government may, by notification in the Official Gazette establish a Financial Corporation for the State under such name as may be specified in the notification and such Financial Corporation shall be a body corporate by the name notified. Thus, a State Financial Corporation is established under a Central Act. Therefore, when the words "by and under an Act" are preceded by the words "established", it is clear that the reference is to a corporation established, that it is brought into existence, by an Act or under an Act. In short the term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act.

24. There is indication in the definition of ''establishment'' itself, which clearly establishes that all companies incorporated under the Companies Act are not establishments. The enumeration of establishments in the definition of ''establishment'' specifically includes "a Government Company as defined in Section 617 of the Companies Act, 1,956". This shows that the legislature, took pains to include in the definition of ''establishment'' only one category of companies incorporated under the Companies Act, that is the ''Government Companies'' as defined in Section 617 of the Companies Act. If, as contended by the employee, all Companies incorporated under the Companies Act are to be considered as ''establishments'' for the purposes of Section 2(k), the. definition would have simply and clearly stated that ''a company incorporated or registered under the Companies Act 1956'' which would have included a Government company defined under Section 617 of the Companies Act, 1956. The inclusion of only a specific category of companies incorporated under the Companies Act, 1956 within the definition of ''establishment'' necessarily and impliedly excludes all other types of companies registered under the Companies Act, 1956, from the definition of ''establishment''.

25. It is clear that the legislative intent was to apply section 47 of the Act only to such establishments as were specifically defined as ''establishment'' under

section 2(k) of the Act and not to other establishments. The legislative intent was to define ''establishment'' so as to be synonymous with the definition of ''State'' under Article 12 of the Constitution of India. Private employers, whether individuals, partnerships, proprietary concerns or companies (other than Government companies) are clearly excluded from the ''establishments'' to which section 47 of the Act will apply.

26. There is yet another indication in section 47, that private employers are excluded. The caption/marginal note of section 47 describes the purport of the section as non-discrimination in Government employment. The word ''Government'' is used in the caption, broadly to refer to ''State'' as defined in Article 12 of the Constitution. If the intention of the legislature was to prevent discrimination of persons with disabilities in any kind of employment, the marginal note would have simply described the provision as ''non-discrimination in employment'' and subsection (1) of section 47 would have simply used the word ''any employer'' instead of using the word ''establishment'' and then taking care to define the word ''establishment''. The non-use of the words ''any employer'', and ''any employment'' and specific use of the words ''Government employment'' and ''establishment'' (as defined), demonstrates the clear legislative intent to apply the provisions of Section 47 only to employment under the State and not to employment under others. While the marginal note may not control the meaning of the body of the section, it usually gives a safe indication of the purport of the section to the extent possible. Be that as it may.

27. The learned counsel for the employee submitted that the decision in Dhanoa (AIR 1981 SC 1395) was rendered with reference to a penal statute; and that words or terms in such statutes are used in a restrictive and strict sense. He contended that definition of words and terms in a penal statute will not provide a safe guide to interpret the same words employed in socio-economic legislations. He further contended that the terms used in a socio-economic statute like Disabilities Act, providing for full participation and equality, for people with disabilities and to remove any discrimination against them vis-a-vis non-disabled persons, should be interpreted liberally. He submitted that any interpretation of the term ''a corporation established by or under a Central, Provincial or State Act'' with reference to the Penal Code should not therefore be imported for understanding the meaning of that term when used in the Act. He referred to and relied upon the Statement of Objects and Reasons of the Act which states that India as a signatory to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, enacted the Statute to provide for the following :

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream."

He submitted that keeping the said objects in view, the term ''establishment'' should be extended to all corporations incorporated under the Companies Act 1956, irrespective of whether they are in the public sector or private sector.

28. He also relied upon the following principle of contextual interpretation enunciated by this Court in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., 1987 (1) SCC 424 : (AIR 1987 SC 1023) :

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say is the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. The interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

29. He next relied upon the principle that words in a social welfare legislation should receive liberal and broad interpretation, stated by this Court in Workman of American Express International Banking Corporation v. Management of American Express International Banking Corporation, 1985 (4) SCC 71 : (AIR 1986 SC 458) :

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the ''colour'', the ''content'' and the ''context'' of such statutes (we have borrowed the words from Lord

Wilberforce''s opinion in Prenn v. Simmonds, 1971 (3) All ER 237). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court (1981) 1 SCR 789 : (AIR 1981 SC 422), we had occasion to say,

"6...Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.""

30. He next relied upon the following observations in Kunal Singh v. Union of India, 2003 (4) SCC 524 : (AIR 2003 SC 1623 : 2003 AIR SCW 1013), where this Court, referring to the very section under consideration, observed thus :

"9....Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

31. We agree that the socio-economic legislations should be interpreted liberally. It is also true that Courts should adopt different yardsticks and measures for interpreting socio-economic statutes, as compared to penal statutes, and taxing statutes. But a caveat. The courts cannot obviously expand the application of a provision in a socio-economic legislation by judicial interpretation, to levels unintended by the legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. In this case, there is a clear indication in the statute, that the benefit is intended to be restricted to a particular class of employees, that is employees of enumerated establishments (which fall within the scope of ''State'' under Article 12). Express limitations placed by the socioeconomic statute cannot be ignored, so as to include in its application, those who are clearly excluded by such statute itself.

32. We should not lose sight of the fact that the words "corporation established by or under a Central, Provincial or State Act" is a term used in several enactments, intended to convey a standard meaning. It is not a term which has any special significance or meaning in the context of the Disabilities Act or any other socioeconomic legislations. It is a term used in various enactments, to refer to statutory corporations as contrasted from non-statutory companies. Any interpretation of the said term, to include private sector, will not only amount to

overruling the clear enunciation in Dhanoa (AIR 1981 SC 1395) which has held the field for nearly three decades, but more importantly lead to the erasure of the distinction maintained in the Constitution between statutory corporations which are ''State'' and non-statutory bodies and corporations, for purposes of enforcement of fundamental rights. The interpretation put forth by the employee would make employees of all companies, public servants, amenable to punishment under the provisions of Indian Penal Code and Prevention of Corruption Act; and would also result in all non-statutory companies and private sector companies being included in the definition of ''State'' thereby requiring them to comply with the requirements of non-discrimination, equality in employment, reservations etc.

33. The appellant next contended that the scheme of the Act, does not confine its applicability to government or statutory corporations. Reference is invited to some provisions of the Act to contend that obligations/duties/responsibilities are fixed with reference to persons with disabilities, on establishments other than those falling under section 2(k) of the Act. It was submitted that section 39 casts an obligation on all educational institutions, to reserve not less than three per cent. of the seats for persons with disabilities. In fact, it is not so. Though, the marginal note of section 29 uses the words ''all educational institutions'' with reference to reservation of seats for persons with disabilities, the section makes it clear that only government educational institutions and educational institutions receiving aid from the government shall reserve not less than three per cent. seats for persons with disabilities. It is well recognised that an aided private school would be included within the definition of ''State'' in regard to its acts and functions as an instrumentality of the State. Therefore, care is taken to apply the provisions of the Act to only educational institutions belonging to the government or receiving aid from the government and not to unaided private educational institutions. Further, section 39 of the Act, does not use the word ''establishment''.

34. Reference is next made to the section 44 which requires non-discrimination in transport. This section requires establishments in the transport sector to take special measures (within the limits of their economic capacity) to permit easy access to persons with disabilities. The employee contends that this would mean that all establishments whether statutory corporations falling under the definition of section 2(k) of the Act or non-statuary corporations, or even individuals operating in the transport sector should comply with section 44 of the Act. We do not propose to consider whether Section 44 applies to non-statutory corporations in the transport sector, as that issue does not arise in this case. Further the use of the words "within the limits of their economic capacity" makes it virtually directory. Be that as it may."

22. The decision of the Supreme Court in Dalco Engineering Private Limited (supra) answers the argument of Mr.Koshti that the socio-economic legislation should be interpreted liberally. The observations of the Supreme Court as

contained in paragraph 31 are relevant. The Supreme Court has made out very clear that the Courts should not expand the application of a provision in a socio-economic legislation by the judicial interpretation, to the levels unintended by the Legislature, or in a manner which militates against the provisions of the statute itself or against any constitutional limitations. If the writ-applicant Bank is not an ''establishment'' as defined under Section 2(k) of the Act, 1995, then only on the broad principle that the socio-economic legislation should be interpreted liberally the Bank would not automatically fall within the ambit of the term ''establishment'' under Section 2(k) of the Act, 1995.

23. It appears that the Commissioner failed to consider the matter from the point of view as explained by the Supreme Court.

24. In view of the aforesaid discussion, I hold that neither the writ-applicant Cooperative Bank is a ''corporation established by or under a State Act'' nor an ''authority or a body, owned or controlled or aided by the Government''.

25. At the cost of repetition I may state that the legislative intent was to apply Section 47 of the Act, 1995 only to such establishments as were specifically defined as ''establishment'' under Section 2(k) of the Act, 1995, and not to other establishments. The legislative intent was to define ''establishment'' so as to be synonymous with the definition of ''State'' under Article 12 of the Constitution of India. The supervisory or general regulations under the statute over the cooperative societies, which are body corporate, does not render the activities of the body so regulated as subject to such control of the State so as to bring the writ-applicant Bank within the meaning of the ''State'' or ''Instrumentality of the State''.

26. Mr.Koshti submitted that no fault could be found with the impugned order because the State Government itself, vide its Government Resolution dated 4th May 2002, has made it very clear that the provisions of the Act, 1995 shall be made applicable to all the cooperative institutions.

27. Ms.Manisha Shah, the learned Government Pleader, submitted that a cooperative bank registered under the Act, 1961 will not fall within the term ''establishment'' as defined under Section 2(k) of the Act, 1995. She submitted that even if the State Government has issued such a resolution, the same would not be consistent with the statutory provisions of the Act. However, according to the learned Government Pleader, since there is no challenge to the Government Resolution dated 4th May 2002, the Court may not go into the issue as regards the legality and validity of the Government Resolution dated 4th May 2002.

28. I am not impressed by the submission of Mr.Koshti as regards the Government Resolution dated 4th May 2002 referred to above. The Government Resolution came to be issued in exercise of the powers of the State Government under Article 162 of the Constitution of India. The Government Resolution is in the nature of an executive instruction. It is well-settled that the administrative or executive instruction cannot override the statutory provisions of the Act.

29. Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to the statutory laws cannot be enforced. (Vide: B.N. Nagarajan and Ors., etc. v. State of Mysore and Ors. etc., AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan and Ors., AIR 1967 SC 1910; Secretary, State of Karnataka and Ors. v. Umadevi and Ors., AIR 2006 SC 1806; and Mahadeo Bhau Khilare (Mane) and Ors. v. State of Maharashtra and Ors., (2007) 5 SCC 524).

30. In view of the aforesaid discussion, the writ-application succeeds and is hereby allowed. The impugned order passed by the Commissioner for the Handicapped Persons, State of Gujarat, is hereby ordered to be quashed and set aside. Rule made absolute.

