Karnataka High Court Karnataka State Road Transport ... vs Karnataka State Road Transport ... on 20 March, 2000 Equivalent citations: 2000 (4) KarLJ 370 Bench: R Gururajan ORDER 1. The KSRTC Staff and Workers' Federation (for short 'the federation') has filed this petition complaining about the violation of Article 19(1)(c) of the Constitution of India and about the conditions of service/regulations framed in violation of the Trade Unions Act imposed on them by the Corporation on account of the amendment of the KSRTC Servants (Conduct and Discipline) Regulations, 1971 ('the Regulations' for short). 2. The first petitioner is a federation registered under the Trade Unions Act having its office at Malleswaram, Bangalore. Petitioners challenge the validity of sub-regulation (5) to Regulation 9 and sub-regulation (6) to Regulation 9 of the Regulations. 3. Petitioner in the lengthy petition states that the first respondent is a Corporation constituted in the year 1961 in terms of Road Transport Corporation Act of 1950. Prior to the setting up of the Corporation, the transport operations were carried on as a departmental undertaking known as MGRTD. The workmen/workers are governed by the Industrial Disputes Act and Standing Orders. Several settlements have been entered into between the petitioner-union and respondent-Corporation. In 1972 KSRTC framed the Conduct and Discipline Regulations under Section 45 of the Road Transport Corporation Act ('RTC Act' for short). The said regulations were challenged unsuccessfully by the petitioner. 4. Petitioner says that it has a majority membership in KSRTC and is operating in KSRTC for more than 35 years. Various categories of employees are members of the petitioner-federation. They state that various settlements have been entered into in respect of employees of the Corporation under the provisions of Industrial Disputes Act, 1947. There were litigations with regard to recognition/check off system and referendum. Finally, the Hon'ble Supreme Court has upheld the contention of the petitioner with regard to the recognition, referendum and pay check off facility. 5. Petitioners state that the supervisory staff and the security staff are its members in terms of its bye-laws as approved by the statutory authorities in terms of Trade Unions Act of 1926. The first respondent-Corporation has submitted the amended regulations for approval to the Government and the Government has approved the amendment vide its order dated 13-2-1997 bearing No. HTD 14 TRA 97, Bangalore with regard to sub-regulation (5) to Regulation 9. The Government has also approved sub-regulation (6) to Regulation 9 vide its order dated 13-2-1997 bearing No. HTT 15 TRS 97, Bangalore. The amended regulation under Clauses 5 and 6 provide for supervisory cadre and the security staff not associating themselves in any manner with the petitioner-federation. A list of category of all supervisors has also been mentioned in the amended regulations. The approval by Government for Regulation 9(5)(6) is at Annexure-A and approval to sub-regulation (6) of Regulation 9 is at Annexure-C. The amended regulations are at Annexures-D and 5. Annexure-E is a circular bringing into force these amended regulations. 6. The said regulations have been challenged essentially on the ground of violation of Article 19(1)(c)/various provisions of the Trade Unions Act and the settlements existing as on date. It is also challenged on the ground of jurisdiction by the State Government. Petitioners contend that the RTC Act is a

general Act and Trade Unions Act is a special Act and the special Act overrides general Act and therefore any approval granted under Section 45 has no legal sanction. It is also the case of the petitioners that such amendment is an unfair labour practice, that is to say interference in the trade union activities and right to form association guaranteed to the citizen under Article 19(1)(c) of the Constitution. Such restrictions do not amount to misconduct under the rules according to the petitioner. The same has been introduced with an oblique motive of dividing the workmen according to the petitioner. 7. The respondents have filed their counter. The Corporation has justified the amendment by contending that the Corporation is fully justified in amending the regulation. After careful consideration of the need, particularly the service motive, in the interest of the organisation, have thought fit to amend the regulation. They state in para 7 that there is a necessity of restricting the supervisory staff from becoming part of workers union inasmuch as in the course of discharge of their duties, they are called upon to control the employees under their supervision who belong to either Class III or Class IV. The supervisory staff would be exposed to embarrassment in respect of loyalty to workmen. To avoid such embarrassment and the activities of the federation in the interest of healthy functioning of the administration, it thought fit to impose reasonable restrictions in terms of the regulation. Even with regard to security staff it is stated in para 14 that the security personnel are discharging security job. They have to keep vigil over every aspect and activities and with reference to its security. When such functions are performed by the security staff, it is neither expedient from the point of view of the administration nor healthy practice to allow security staff to become members of the union/federation and identify themselves with one or two unions/federations. They also justify that the amended regulations are in conformity with the laws governing trade unions. According to them such restriction is in conformity with Article 19(4) of the Constitution. They have justified their action in this manner. 8. Petitioners have filed their rejoinder and have also filed several additional documents as I see from the material placed on record. Lengthy arguments have been advanced by the learned Counsels appearing for the federation and for the Corporation. Both the learned Counsels took me through the history of the Corporation and the merits and demerits of the amended regulations. 9. Facts.–In W.P. Nos. 23990 and 23991 of 1997 connected with W.P. No. 36331 of 1997: There are a number of litigations between the parties and alt the learned Counsels agree that there is no impediment for me in disposing of all these petitions on merits finally. Hence the petitions are taken up for final disposal. 10. W.P. Nos. 23990 and 23991 of 1997 are filed by the workmen, the Karnataka State Road Transport Corporation represented by KSRTC Staff and Federation. In the petitions they have stated that the petitioner is a recognised sole bargaining agent for the purpose of collective bargaining in KSRTC since 1987. The Corporation came into existence in 1961 and is engaged in transport operations and it is the biggest transport operator in the State. Prior to 1961 passenger transport was carried out as a departmental undertaking by the Government. The condition of service of the employees belonging to classes 3 and 4 are laid down by various settlements under the

Industrial Disputes Act. The settlements as referred to in the writ petitions are 1972 settlement (Annexure-B) and 1962-63 settlement (Annexure-C). 11. Till about 1987, the recognition was given on political basis and at the discretion of the Corporation. In 1987 there was a change in the policy and it was decided by respondent-Corporation to hold ballot or referendum amongst various unions for the purpose of negotiations. Recognition was granted by the Corporation for the purpose of settlements etc. A referendum was held and the petitioner got largest majority of votes. It was recognised as sole bargaining agent at the State level. At the divisional level, unions got majority to deal with local matters. The settlement of 1987 is filed and marked as Annexures-D and E. The second ballot was held in the year 1992 and the petitioner-federation again got a big majority and was recognised as a sole bargaining agent. The settlement dated 10-5-1990 was approved on 10-5-1993. But the Government, unilaterally changed the terms of the settlement by an order dated 10-9-1993. It took away the right of pay roll check off which was agreed to in the settlement of 1988. This was done at the instance of ministry in charge of the transport. Petitioners challenged the Government Order dated 10-9-1993 in W.P. No. 33595 of 1993. This Court in the said writ petition and also in W.A. No. 8637 of 1996 set aside the order of the Government and held that the federation is entitled to pay roll check off facility as per the agreement of 1988. The Corporation, instead of honouring the settlements, took a stand that recognition has come to an end and no pay roll check off is available to the petitioner. The petitioner-federation decided to go in for another appeal and wrote a letter dated 10-11-1995. The Corporation replied by letter dated 12-1-1996. The Management got a right to hold a ballot. On 20-7-1996, the Chief Labour Welfare Officer wrote a letter stating that a Returning Officer has been appointed as per Annexures-G, G1 and G2. 12. There was inaction on the part of the Corporation and they did not allow the Returning Officer to hold the ballot. Suddenly, a circular dated 3-5-1997 was issued by the Corporation proposing certain amendments to the procedure for ascertaining the representative union. The Corporation also got the amendment approved, thereby a section of the workmen namely security and supervisory staff cannot be their members. The same is challenged in another writ petition in W.P. Nos. 7601 to 7603 of 1997. 13. These petitions are filed challenging the circular dated 3-5-1997 on the ground that the amendment is contrary to the existing referendum procedure. It is also motivated. Recognition is important and necessary for proper industrial relations. The change is arbitrary and unsustainable. In these circumstances, the petitioners have sought for the following reliefs:– "Wherefore, it is prayed that this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ or order or other direction quashing Annexure-A, the letter bearing No. KST/CO/LAB/119/97/98, dated 3-5-1997 issued by respondent 4- the Chief Labour and Welfare Officer and to direct the respondent to hold referendum immediately on the same basis as was held in the year 1991 and as per Annexures-F, F1, F2 and in all the subsidiary Corporations also. It is further prayed that this Hon'ble Court may be pleased to direct the first respondent-Corporation to continue to recognise the petitioner-federation till new arrangements come into being as a result of

referendum etc. It is further prayed that the first respondent may be directed to accord Pay Roll check off facility as was in existence upto 10-9-1993". An interim stay has also been granted. A counter-statement has been filed by the Corporation. The Corporation contends that the new format has been brought into force after due deliberations in the light of the past experience. It does not in any way undermine the trade union movement. It provides for greater representation for the workers. With regard to the prohibition, a writ petition has already been filed by the workmen. Challenge to the new format is unnecessary. The petitions are premature. They also state that as against the judgment of the High Court in W.A. No. 8637 of 1996, the matter is pending in Hon'ble Supreme Court. They justify their action. 14. A rejoinder has been filed with lot of documents. Elaborate arguments have been advanced by the learned Counsel on either side on several dates. Mr. M.C. Narasimhan, learned Counsel for the petitioners reiterated the facts and grounds raised in the petition and also argued that the established practice of 'collective bargaining' has been taken away by the authorities. He also argues that there should be a fair practice in the matter of recognition. The existing practice has to be continued in the establishment. The recognition is granted only with a view to maintain industrial peace. 15. W.P. No. 36331 of 1997 is another petition filed by the very same union and the prayer therein is only to allow the facility of pay roll check off from October 1993 and further to engage and continue the recognition of the said federation. The facts mentioned in W.P. Nos. 23990 and 23991 of 1997 is reiterated in this petition. All the petitions can be disposed of by this common order. 16. Arguments in W.P. Nos. 7601 to 7603 of 1997 and findings.–Mr. M.C. Narasimhan, learned Senior Counsel, while reiterating the grounds urged in the writ petition contends that the impugned regulations violate the constitutional protection guaranteed to them. He states that the right to form an association is a fundamental right and that right cannot be curtailed in any manner which has been done by the Corporation in the case on hand. He states that the security staff and supervisory staff are members of the federation for several decades. Now, by virtue of the amendment they are deprived of getting themselves associated in any manner with the petitioner. Such a bar is in violation of Article 19(1)(c). He relies on Kameshwar Prasad and Others v State of Bihar and Another , O.K. Ghosh and Another v E.X. Joseph , B. Manmohan and Others v State of Mysore and Others, Smt. Damyanthi Naranga v Union of India and Others and contends that the impugned regulations are contrary to Article 19(1)(c). He argued that they are not regulatory in character and are not saved under Article 19(4) of the Constitution. 17. He also argued that such restrictions amount to interference in the right to form trade unions. Any such interference is unfair labour practice under Schedule V of the Industrial Disputes Act. He argued that several settlements have been entered into between the parties and the rights have been curtailed in respect of these employees. Such rights cannot be unilaterally taken away and any such taking away would be in violation of Schedule V. He also argued that the Trade Unions Act is a special Act and the RTC Act only provides for establishment of Corporation by the Government. Sections 34 and 45 provide for issue of

a direction. The said right to have membership and form a union under the Trade Unions Act cannot be curtailed by the general Act. He states that the Government cannot interfere in this matter. 18. His next argument is that the Corporation cannot take away the right given under the Act and also the constitution by amending the regulations. He also argued that it is also in violation of the Industrial Disputes Act. The joining of the trade union cannot be held to be a misconduct. In conclusion he states that the regulations are to be declared unconstitutional on the facts of this case. 19. Mr. P.R. Ramesh, the learned Counsel appearing for the Corporation justifies by contending that the Corporation being a creature of a statute established under Section 20 of the RTC Act, it owes a duty to provide efficient transport service to the general public. The officers and employees are public servants under the Act. The Corporation, in the best interest of general public and with a view to maintain public efficiency, have imposed a restriction in the exercise of its power. It cannot be said to be in violation of Article 19(1)(c) or the Trade Unions Act. He argued that these amended clauses are protected under Article 19(4) and it is a reasonable restriction. He states that the right to form an association is not taken away and it only restricts the association directly or indirectly. He justifies the amendment. He also counters the violation of the Trade Unions Act and the Industrial Disputes Act. He also argued that the RTC Act being a special Act providing better operation, cannot be termed as a general Act as contended by Mr. Narasim-han, learned Senior Counsel. There is also no unfair labour practice as contended by him. He relies on several judgments in support of his stand. 20. Mr. D'Sa, learned Additional Government Advocate appearing for the Government supports the Corporation. He supports the contention that the restriction in terms of the regulation cannot be said to be in violation of Article 19 of the Constitution. All that is prohibited is to associate with the petitioner-union. It does not prevent security or supervisory staff from having an association of its own. He also submits that neither the security personnel nor the supervisory staff are before me questioning the regulations. He states only the federation is the petitioner before me. I am unable to accept this argument for rejecting the prayer of the petitioner for the simple reason that these personnel are/were members of the petitioner-Federation. Therefore, on the ground of supervisory/security personnel not being a party to these proceedings, does not in any way alter the situation. Even otherwise petitioners 2 and 3 are from supervisory/security staff. 21. After hearing the learned Counsel, the following questions emerge for my consideration:– (1) Whether the impugned regulation is in violation of the fundamental right guaranteed under Article 19(1)(c) of the Constitution of India? Alternatively, whether the said regulations are protected under Article 19(4) of the Constitution? (2) Whether the impugned regulations take away the rights guaranteed to the petitioners under the provisions of the Indian Trade Unions Act? (3) Whether the impugned regulations are to be termed as unfair labour practice within Schedule V of the Industrial Disputes Act? (4) Whether the State Government has necessary power and jurisdiction to impose such restrictions in exercise of the powers granted to them under Section 45(2)(c) of the RTC Act, which is a special Act? (5) Whether the said

regulations can be treated as a misconduct? 22. Mr. M.C. Narasimhan, learned Senior Counsel, as mentioned earlier, elaborately argued that the impugned regulation is in violation of Article 19(1)(c) of the Constitution inasmuch as the said regulation is in contravention of the right to form an association under Article 19(1)(c) of the Constitution. He relies on several judgments. 23. Per contra, Mr. P.R. Ramesh argued that it is fully protected under Article 19(4) assuming that it comes under Article 19(1)(c). He relies on several judgments of the Hon'ble Supreme Court. 24. The impugned regulation read as under:– "Notwithstanding anything contained in the regulation, the supervisory cadre of employees and above shall not associate themselves and or be members of any trade union and or federation and or association formed by the workers. They shall also not associate with or be members of any trade union and association formed by any other class of employees in the Corporation. For the purpose of this regulation, the Supervisory category shall include:– xxx xxx xxx". Similar clauses are with regard to the security personnel. The supervisory category of employees and the security personnel are required not to associate themselves and or the members of any trade union and or federation and or association formed by the workers. They shall also not associate with or be members of any trade union and or federation and or association formed by any other class of employees in the Corporation. The regulations are very widely worded, Restriction has been imposed both on supervisory cadre of employees and the security personnel. As I see, that they cannot in any way associate or be members with any trade union or federation/association formed by the workers. They are also forbidden from associating or being members of any other trade union formed by any other class of employees. They are virtually treated as foreign elements in respect of other trade unions. They are excluded in any way associating or being members with the union of workers or union of employees. The only right given to them is to have their own association. This regulation has to be viewed in the light of the right guaranteed under Article 19(1)(c) of the Constitution. 25. Article 19(1)(c) provides for a right to form an association of their choice. The rights of these workers are restricted by the regulations. The defence is that it is in public interest. Mr. M.C. Narasimhan, learned Senior Counsel vehemently contends that for over 35 years these personnel were members of petitioner-federation and all of a sudden this regulation is introduced in contravention of the guarantee under Article 19(1)(c). 26. The decision in Kameshwar Prasad's case, supra, is a leading case under Article 19(1)(c) of the Constitution. Rule 4-A was introduced by the respondent in that case reading as under:– "No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service". The said rule was challenged as violative of Article 19(1)(c) of the Constitution. The Supreme Court in para 14 notices the proper discipline, State's need etc., and it notices as under (para 16):– "In other words, the maintenance of discipline among Government servants not only contributed to the maintenance of public order but was a sine qua nan of public order. (2) The other aspect in which it was presented was the negative of the one just now mentioned that if Government servants were ill-disciplined and were themselves

to agitate in a disorderly manner for the redress of their service grievances, this must lead to a demoralisation of the public and would be reflected in the disappearance of public order". After noting this defence, in para 17 the Hon'ble Supreme Court holds that "it finds itself unable to uphold the submission on behalf of the State". The Hon'ble Supreme Court notices that the total ban of every type of demonstration be the same however innocent and however incapable of causing a breach of public tranquility. The Hon'ble Supreme Court holds that such a rule is in violation of Article 19 of the Constitution. 27. In O.K. Ghosh's case, supra, the Hon'ble Supreme Court notices Rule 4-A. In Kameshwar Prasad's case, supra, the Hon'ble Supreme Court was noticing the rule framed by the Bihar Government. A similar rule was available in the Central Civil Services (Conduct) Rules. The same was challenged in O.K. Ghosh's case, supra. The Hon'ble Supreme Court noticed in paras 11 and 12 as under: "It is not disputed that the fundamental rights guaranteed by Article, Article 19 can be claimed by Government servants. Article 33 which confers power on the Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Article 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his coemployees are entitled to form associations or unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government servants as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the Government". XXX XXX XXX. "Therefore, it is quite possible that recognition may be refused or withdrawn on grounds which are wholly unconnected with public order and it is in such a set up that the right to form associations guaranteed by Article 19(1)(c) is made subject to the rigorous restriction that the association in question must secure and continue to enjoy recognition from the Government. We are, therefore, satisfied that the restriction thus imposed would make the guaranteed right under Article 19(1)(c) ineffective and even illusory. That is why we see no reason to differ from the conclusion of the High Court that the impugned Rule 4-B is invalid. In the result, Appeal No. 378 of 1962 fails and is dismissed". The Hon'ble Supreme Court partly struck down Rule 4-A in the matter. In the said judgment, the Hon'ble Supreme Court notices that a right to form an association is conditional by the existence of recognition. It also notices that Rule 4-B had imposed restrictions on this right and it virtually compels a Government seruant to withdraw his membership of the service association. After noticing these two vital causes, the Hon'ble Supreme Court holds that such restriction has no direct or proximate or reasonable restriction between the association and the discipline and the members of the said association. The Hon'ble Supreme Court holds that such restriction thus imposed would make the guaranteed right under Article 19(1)(c) illusory and ineffective. Similar restrictions are there in the present regulations. The restricted choice given virtually makes the right guar-

anteed under Article 19(1)(c) as ineffective and illusory as held by the Hon'ble Supreme Court. The supervisory and security staff, who are members are not allowed to become members of trade union/association and are compelled to withdraw their members on the ground of misconduct under the amended regulations. 28. B. Manmohan's case, supra, is a case challenging Rule 7(1) of the Mysore Government Servants' Conduct Rules, 1957. Article 19 was set in motion while challenging the rules. This Court noticed the contention of a reasonable restriction and ruled that a public interest cannot be served by requiring the Government servant to refrain from criticising the Government policy or action even if it be only in the presence of his colleagues. Public interest requires that Government servants should be contended, efficient and disciplined and this cannot be achieved by gagging their mouths. No useful purpose will be served by forming an association of theirs if the Government servants are deprived of the opportunity of discussing the Government's policy or action relating to their conditions of service, which process may necessarily involve criticism of the policy or action of the Government. It may be that a Government servant cannot be permitted to go to the general public and denounce any of the Government's policy or action. After noticing thus, this Court struck down Rule 7(1). 29. The impugned widely worded regulations, in the light of the observations of this Court and the Hon'ble Supreme Court, according to me, literally prevents the supervisory and security personnel even from discussing associating their service conditions with (petitioners) them, and is nothing but gagging their mouths as held by this Court and it makes the right under Article 19 illusory insofar as these employees are concerned. 30. Smt. Damyanthi Naranga's case, supra, is a case filed by the petitioner against the State. That was a case of an association formed for the development of Hindi and its propagation throughout the country. Uttar Pradesh Legislature passed an Act known as U.P. Hindi Sahitya Sammelan Act No. 36 of 1956 under which a statutory body was created. That was challenged and ultimately it landed in Supreme Court. One of the contention, being that the right to form an association under Article 19(1)(c) was affected, it was also argued that Article 19(4) does not save the Act. While noticing this contention, the Hon'ble Supreme Court, after noticing the case of O.K. Ghosh, supra, in para 6 rules as under:– "The Act does not merely regulate the administration of the affairs of the society; what it does is to alter the composition of the society itself as we have indicated above. The result of this change in composition is that the members, who voluntarily formed the association, are now compelled to act in that association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the association itself clearly interferes with the right to continue to function as members of the association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law, by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership

of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of forming an association and does not protect the right to continue the association with the membership either chosen by the founders or regulated by rules made by the association itself, the right would be meaningless because, as soon as an association is formed, a law may be passed interfering with its composition, so that the association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association". In fact, the Hon'ble Supreme Court in the case of O.K. Ghosh, supra, and Smt. Damyanthi Naranga, supra, notices that Article 19(1)(c) steps in not only in the matter of forming an association, but even while taking away the membership of those who have voluntarily joined it. In the case on hand, for more than three decades, the security personnel as well as the supervisory personnel were are members who have joined voluntarily the petitioner's association. Now the impugned regulation takes away without their option the membership of them with the Federation, which, as held by the Hon'ble Supreme Court in the case of Datnyanthi Noranga, supra, is in violation of Article 19(1)(c) of the Constitution. Therefore, I am of the view that the impugned regulation certainly offends Article 19(1)(c) of the Constitution. Court cannot shut its eyes and deny a right to form an association or associations of their choice, to a section of the workmen. Hence the impugned absolute unconditional restriction imposed on a section of the workmen clearly violates the guaranteed right under Article 19(1)(c) of the Constitution and makes that right an illusory right. 31. The argument of Mr. Ramesh, learned Counsel is that even if it violates Article 19(1)(c), 19(4) gives them a right to impose a reasonable restriction in the interest of public order. He says that the respondent being a Government sector engaged in service industry, the restriction of only joining the petitioner-union is in the interest of public order. Therefore, the same is saved is his submission. Mr. D'Sa, learned Additional Government Advocate appearing for the Government also takes the same stand. Their argument is that an option is taken away in the interest of public order. This argument also does not appeal to me for two reasons. The reason given in the objection statement is that in the event of the security personnel/the supervisory personnel joining the association or joining the petitioner-federation, would come in their way of performance of their duties efficiently and in effective manner. This argument cannot be accepted. The same argument may hold good even in respect of other employees as well. A mere joining of in a trade union cannot be presumed and assumed to come in the way of rendering security service ineffective as contended by respondents. If any workman, on account of his association to the union fails to carry the duty cast on him, sufficient regulations are available to the Corporation to take action against such employees, A mere apprehension cannot by itself be taken as a ground for denying this fundamental right. Article 19(4) on the face of it, cannot be called in aid to claim the benefit of the regulations. An unreasonable restriction has been imposed on a section of the workmen. It is also seen that

the restriction is absolute in its character. Neither the security/supervisory personnel can become members of the petitioner-association nor can they associate in any manner with the union of workers. Such absolute unrestricted regulation can only be termed as an arbitrary act. One can understand some reasonable restriction within the four corners of law, but not the whole restriction as in the present case. The security/supervisory personnel cannot even associate themselves with the workers union. In this connection, I may usefully refer to the decision in Uttar Pradeshiya Shramik Maha Sangh v State of Uttar Pradesh and Others. The right to form an association guaranteed under Article 19(1)(c) is not a right to be exercised in a vacuum or an empty or paper right. The enjoyment and fulfillment of the right begins with the fulfillment of the purpose for which the association is formed. The word 'form' has been held to refer not only to the initial commencement of the association but also to the continuance of that association. 'Collective bargaining' on behalf of workmen is almost the only function of the overwhelming majority of the state Governments. When a citizen goes to the Court with a complaint of violation of Article 19(1)(c) in the matter of formation of association, the Court cannot surrender its judgment in favour of any other ordinary state in deciding whether the impugned restrictions are reasonable or not. Therefore, the reliance on Article 19(4) is of no assistance to the respondents. Here again it is seen that even after formation of a union of their choice, they cannot even have any affiliation or any understanding or any association with the petitioner-union. Such absolute bar cannot be in the interest of public order. The learned Counsel for the respondents however relied on Ous Kutilingal Ackudan Nair and Others v Union of India and Others. That was a case relating to a defence establishment. Articles 31 and 41 were pressed into service. The Hon'ble Supreme Court noticed that these members fell into the category of 'armed personnel' and hence the curtailment is saved under Article 19(4) of the Constitution. That judgment will be of no assistance to the respondents. Similarly, the case in AIR 1977 SC 379 (sic) also deals with the police force. Respondents cannot seek aid of this judgment since statute provide for such restriction. Therefore these two judgments are clearly distinguishable on facts and therefore the contention that the restriction is saved under Section 19(4) cannot be accepted. 32. Public order can be maintained even without such restriction. Except pleading no material worth consideration has been placed. The Corporation has been able to maintain itself for more than 35 years with security/supervisory personnel being members of union. No case is pointed out to the Court to show that the public order has suffered on account of affiliation/affinity of security/supervisory personnel to the petitioner-union. In the absence of any factual detail and factual foundation, the contention of Article 19(4) is rejected. Hence this Court rules that sub-regulation (5) to Regulation 9 and sub-regulation (6) to Regulation 9 of the KSRTC Servants (Conduct and Discipline) Regulations, 1971 are in violation of Article 19(1)(c) of the Constitution and declare them to be unconstitutional and are struck down in these petitions. 33. Regarding Point No. 2.–The Indian Trade Unions Act of 1926 is an Act providing for registration of trade unions and in certain respects to define the law relating to registered trade unions. The said Act gives a right to

the workmen to form a trade union. A trade union has been registered by the petitioner-union. The supervisory/security personnel are not excluded under the Act either to form a union or to be members of the petitioner-union. No law is shown to me as being inapplicable to the security/supervisory personnel being members of a union. The right to amalgamate is provided under Section 24. The present restriction comes in the way of even amalgamation on account of an embargo of association. In the circumstances, though a choice has been given, even that choice is rendered useless on account of restriction of association with the petitioner-union. When a statute provide for amalgamation of union, a regulation framed by way of delegated legislation cannot take away a statutory right. Therefore the present regulation in the present form certainly in my opinion, violates the statutory right given under Trade Unions Act. On this ground also the regulations are held to be bad in law. It is also to be noticed here that Section 36 of the Industrial Disputes Act provide for representation. If the petitioners are prevented from being associated in any manner with the petitioner-union, they may not be even able to represent security/supervisory personnel under Section 36 of the Act, before the authority under the Industrial Disputes Act. 34. Regarding Point Nos. 3, 4 and 5.–The Industrial Disputes Act has been amended in the year 1947. The Parliament in its wisdom has introduced a chapter known as unfair labour practice. 'Unfair labour practice' has been defined under Section. . . . Schedule V refers to unfair labour practice. A careful reading of Schedule V of the Industrial Act, particularly 1, 3, 4 would show that the present regulations it is nothing but an interference in the right of a workman to have an association of his choice. When a choice is given to the workman to be a member of union of his choice, that choice cannot be taken away by the regulation. However, I do not express any opinion on this issue in these petitions though prima facie it appears to me that it comes within the mischief of Schedule V of the Industrial Disputes Act. 35. Lot of arguments have been advanced on either side to contend as to whether RTC Act is a special Act or a general Act. The RTC Act is a Central Act. It is an Act to provide for the incorporation and regulation of road transport, corporations. Chapter II deals with the road transport corporation. Chapter II-A deals with subsidiary corporations. Chapter III deals with powers and duties and Chapter IV deals with finance, accounts and audit. Chapter V is a miscellaneous chapter providing for protection as to Section 34 and a power to make regulation under Section 45(2)(c) with regard to conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the managing director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Fi-nancial Adviser. Trade Unions Act is an Act of the year 1926. Its essential object is to permit the workmen to have an association of their choice. Various definitions are provided. Chapter deals with registration of unions. Chapter deals with amalgamation etc. A careful reading of the Trade Unions Act show that it deals only with the formation of trade union and nothing else whereas the RTC Act is an Act essentially to form a Corporation. Incidentally certain directions or powers are issued in the miscellaneous chapter. Mr. M.C. Narasimhan, learned Senior Counsel argued that

RTC Act being a general Act, it has to pave way to special Act namely Trade Unions Act. Per contra, Mr. P.R. Ramesh, learned Counsel for respondents argued that Corporation having taken its birth under RTC Act and for proper efficiency of the Corporation, regulations have been framed and therefore RTC Act is a special Act. After going through the object of various provisions of the Act, I am of the view that RTC Act is an Act essentially brought into force for formation of Corporation and for its administration. In the course of the administration certain powers have been given by way of delegated legislation as against the Trade Unions Act which deal with only trade unions and nothing else. Hence, compared to the RTC Act, Trade Unions Act can be said to be a special Act on the facts of this case. In this connection, I may also refer to a few judgments referred to me by the learned Counsel on either side. 36. Mr. M.C. Narasimhan, learned Senior Counsel referred to the judgment of KV.R. Shetty v Secretary to Government, Home Department, Karnataka and Others, Pandavapura Sahakara Sakkare Karkkane Limited v Presiding Officer, Additional Industrial Tribunal and H. Muniswamy Gowda v Management of KSRTC and Another. It is contended by Mr. Narasimhan, learned Senior Counsel contends that the High Court in K.V.R. Shetty's case, supra, ruled that the regulation is in supersession over the certified standing orders. This judgment was subsequently overruled by the Full Bench in K.V.R. Shetty's case, supra. The Full Bench ruled that the Industrial Employment Standing Orders Act is a special Act governing service conditions. This judgment was again pressed into service to contend that in view of the overruled judgment of K.V.R. Shetty's case, supra, by the Full Bench, a Division Bench of this Court ruled that even after the Full Bench's case, the regulations continue to govern on the basis of the doctrine of stare decisis. But what is to be noticed in this case is that a Full Bench ruled that the Standing Orders Act is a special law under the Industrial laws in respect of matter of schedule. Trade Unions Act stand on the same footing. It provides for the membership and forming of an association for the purpose of effecting adjudication/representation etc., under industrial laws. Therefore, I am of the view that where compared to the RTC Act, the Trade Unions Act has to be certainly considered as a special Act. But however, Mr. Ramesh, learned Counsel invited my attention to the fact that K.V.R. Shetty's case, supra, is upheld by the Apex Court, but unfortunately the same was not brought to the notice of the Full Bench. He also relies on Bhagwan Rama Shinde Ghosat and Others v State of Gujarat, to contend that the earlier judgment of the LIC case in Life Insurance Corporation of India v D.J. Bahadur and Others , cannot be accepted. It was in L/C's case that Industrial Disputes Act is held to be a special law and has to prevail over LIC Act being a general law. This LlC's case, according to the respondents, cannot be looked into in view of Gin's case. I do not want to go into this question with regard to the special law and general law in the petitions. It can be sorted out in an appropriate case. Similarly, the contention as to whether the said regulation would amount to a misconduct or not is also left open. Therefore, without going into the other aspects of the matter, I hold that the two regulations suffer from the constitutional violation. 37. In this connection, I may also usefully refer to the observation

of this Court before concluding, in the judgment in the Mythic Society by K. Narayana Iyengar and Others v State of Karnataka and Others . This Court noticed in para 10 the famous speech of De Toequeville as reported in Democracy in America, page 134 as under: 'In democratic countries, the science of association is the mother of sciences, the progress of all the rest depends upon the progress it has made". In the famous case of Sakal Papers (Private) Limited and Others v Union of India and Others, the Hon'ble Supreme Court notices that the Constitution must be interpreted in a particular way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution fundamentally and therefore while considering the nature and content of those rights, the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. On the other hand, the Court must interpret the Constitution in a manner which enable a citizen to enjoy the right guaranteed by it subject, of course, to permissible restrictions. In the light of the clear pronouncement of law, I am clearly of the view that the present regulation curtails the right under Article 19(1)(c). 38. Arguments and findings in W.P. Nos. 23990 and 23991 of 1997 connected with W.P. No. 36331 of 1997.–Before I consider the rival questions, I must also point out that there are three prayers in the writ petitions in W.P. Nos. 23990 and 23991 of 1997. They are as under:–"(1) A direction to hold a referendum on the same basis as was held in the year 1981 and as per Annexures-F, F1 and F2. (2) To grant recognition to the Federation till new arrangements are made.

And

(3) A direction to agree payroll check off facility as was in existence upto 10-1-1993".

In W.P. No. 36331 of 1997 the prayer is to direct the first respondent to allow the facility of payroll check off from October 1993, to direct to negotiate with the petitioner-federation and to continue the recognition of the petitioner-federation.

39. I must also notice at this juncture that the Hon'ble Supreme Court, during the pendency of the petitions has in its judgment in Management of Karnataka State Road Transport Corporation, Bangalore and Others v Karnataka State Road Transport Corporation Staff and Workers' Federation and Another dismissed the appeal filed by the Corporation subject to a limited clarification that the question of applicability of Section 34 of the Corporations Act is kept open. I must also notice that after the judgment of the Hon'ble Supreme Court in Management of Karantaka State Road Transport Corporation's case, supra, between the same parties the Government in exercise of power under Section 34 of the Act, had issued a direction with regard to its continuance of the payroll check off facility vide its order dated 20-8-1999. The said direction is again a subject-matter of another writ petition in W.P. No. 33595 of 1999. Therefore, there are

only two questions that require to be considered in these petitions one is with regard to holding of referendum and secondly on the basis of the settlement as was held in 1991-92 until new arrangements are made as a result of subsequent referendum.

40. The material facts, as narrated above, would show that the petitioner-federation was the sole bargaining agent in terms of a settlement as mentioned in para 6. Attempts were made to hold a referendum in 1996. At that time, the present endorsement at Annexure-A, dated 3-5-1997 was issued. A substantial change has been made in this referendum notification. It also excludes the supervisory/security personnel from participating in the referendum. It also deals with conducting the referendum at the corporation level. The federation which secures 33.3% or more of valid votes polled in the referendum at the corporate level will be eligible for the recognition at the corporate level. At the divisional level, the federation which secures 33.3% or more of valid votes polled in the referendum, their affiliated unions in the divisions will be' eligible for recognition at the divisional level. It also denies the payroll check off facility in clause (8).
41. Several judgments were relied on by either side for several propositions. Mr. M.C. Narasimhan, learned Senior Counsel relied on Management of Karnataka State Road Transport Corporation's case, supra, Supreme Court Employees Welfare Association v Union of India and Others, and Gorie Gouri Naidu (Minor) and Another v Thandrothu Bodemma and Others . He also pressed into service the conduct of the Corporation, as could be seen from the material on record and argued that it is estopped them from implementing the impugned notification. Per contra, Sri L. Govindaraju, learned Counsel for the respondents, relies on the Giri's case and also their right to change their policy. He states that no injustice is done to the workmen in this regard. Mr. L. Govindaraju, learned Counsel, though initially argued that the petition is premature, on my questioning he stated that the order dated 3-5-1997 has to be implemented and it is not a draft one as stated in the counter to the petition. He also argued that the Corporation in its wisdom has changed the procedure and that cannot be questioned by the workmen in this petition. He also argued that instead of the existing sole bargaining agent, they have provided 33% for the purpose of recognition. With regard to prohibition of security and supervisory personnel, a writ petition is already pending before this Court. He justified the action of the management.
42. Petitioner has also sought for additional grounds and for challenging some of the documents, its participation in parties etc. The said amendment was allowed. The petitioner has filed a memo dated 2-3-2000 stating that they do not press this application and are withdrawing the same without prejudice to its contentions. The said memo is taken on record.
43. The Hon'ble Supreme Court in Management ofKarnataka State Road Transport Corporation's case, supra, has in para 8 framed the following four questions: "1. Whether the union has locus standi to maintain the writ petition as well as the present proceedings on behalf of the workmen;

44. If it has, whether the Government Order dated 10th September, 1993 was legal and valid and/or was uncalled for;
45. Whether the impugned notification issued by the Corporation on 21st September, 1993 was legal and valid; and
46. What Order?" In para 10 the first point is answered in affirmative in favour of the petitioner-union and against the Corporation. Point 2 is again answered in para 17 holding that the Government Order dated 10th September, 1993 in connection with the impugned payroll Check Off Facility was neither legal nor valid and was totally uncalled for. This point is again answered against the Corporation and in favour of the union. Point 3 is answered against the Corporation and in favour of the respondents. The various documents and some arguments are the same that has been advanced before the Hon'ble Supreme Court. The prayer as I see in the writ petitions is with regard to the recognition. The Hon'ble Supreme Court in several places noticed that the petitioner-union continues to be the recognised union until a fresh referendum is held. The Hon'ble Supreme Court in para 10 notices:– "It is also pertinent to note that it is not the case of the Corporation that by any fresh referendum the respondent-federation has lost its recognition as a sole bargaining agent on account of its membership getting depleted and any other rival union has emerged as a recognised union having mustered sufficiently larger membership". Again in para 19 the Hon'ble Supreme Court notices as under: "It is not in dispute between the parties that the settlement of 28th July, 1988 remained in force as the recognition granted to the respondent-union continued at least till 16th July, 1996. It is also pertinent to note that there is no evidence that the union lost such recognition subsequently by any further referendum". In the light of this categorical ruling of the Hon'ble Supreme Court, it is needless for me to once again say that the petitioner continues to be recognised by way of a declaration. The law declared by the Hon'ble Supreme Court is binding on this Court and also on the petitioner and respondents. Therefore, there is no need to once again issue a declaration in the light of the Hon'ble Supreme Court recognising the petitioner's right to be a recognised union till a referendum is held. This prayer, in the circumstances, need not be granted again since the same has already been granted by the Hon'ble Supreme Court in the judgment referred to above. In fact, in various places, the respondent-Corporation has taken shelter of the pending appeal in Hon'ble Supreme Court. Now the Hon'ble Supreme Court has categorically ruled that the petitioner-union is the recognised union in its judgment. Mr. Narasim-han, learned Senior Counsel's serious objection is with regard to recognition. Exclusion of security/supervisory personnel and 33.3% votes providing with recognition in the impugned order in this petition. I have ruled that recognition has already been granted by the Hon'ble Supreme Court.
47. The other question of exclusion of security/supervisory personnel need not be considered again in this petition in view of my order in W.P. Nos. 7601 to 7603 of 1997.

48. However, lot of arguments have been advanced with regard to 33.3% votes providing for recognition. It is this condition that is being seriously canvassed by either of the parties. Mr. Narasimhan, learned Senior Counsel showed me the material documents and contended that the petitioner was a recognised sole bargaining agent for several years. The same cannot be disputed. In the referendum dated 11-12-1987 the petitioner was successful as sole bargaining agent. Again in 1992 the petitioner was recognised in view of the result in the referendum. On 10-11-1995 the petitioner wanted a referendum to be conducted in January 1996. Amendments were also made in that regard. Annexures-Gl and G2 would show that one Mr. Manjunath Shastry was appointed as a Returning Officer. Petitioner insisted on a referendum being held immediately. When all arrangements were made and the Returning Officer had also been appointed, the Corporation, for the first time introduced a 33.3% condition for recognition. From the pleadings and the material placed before me, I am not able to accept the argument of the learned Counsel for the Corporation. The parties have agreed as seen from the material on record, to have a referendum as in the past. The Returning Officer has also been appointed by the Government. Settlements have also been entered on the basis of a referendum in the matter of collective bargaining. The only ground made out by the Corporation both in the petition as well as before me is that the Corporation has a right to change the method of recognition by way of a referendum. No acceptable explanation is forthcoming as to why this 33.3% is being introduced for the first time by the Corporation. On a query by the Court, the learned Counsel submitted that by experience they would like to have not a single bargaining agent and they want a broader representation. The referendum being held to find out the bargaining strength of the agency so that the matter could be started at the earliest possible time. The broader representation, to a certain extent, is also taken care of in the referendum as in the past. In the referendum, a ballot system is provided. An agent is elected not only by the members of the federation but also by others who are not members of the federation. Therefore, the defence of broader representation is also taken care of in the referendum held in the past. Unless the Corporation is able to place any acceptable reason for the change, it is not possible to accept the present method of 33.3% when the same is not even whispered at the time of appointment of the Returning Officer etc. It is also not the case of the Corporation that the earlier method has in any way failed and that failure is the reason for the change. In fact, the Hon'ble Supreme Court in the very case between the parties, has ruled that the parties are bound by the settlements and recognition is also granted in view of the earlier settlement. The recognition is continued in view of the binding settlement. The insistence of 33.3% would again result in more than one bargaining agent which may not be in the larger interest of the Corporation in maintaining industrial discussions. The earlier minutes of the meetings have not been specifically withdrawn by the Corporation. They have some sanctity since those minutes have

been drawn after discussions. The unilateral change by the Corporation, in my opinion is without justifiable reason. It is well-settled that even administration decision is to be reasonable and it cannot be for the sake of a mere change.

49. The other defence of the Corporation is bifurcation of the Corporation. I am unable to understand as to how the bifurcation of the Corporation would be affected on account of the existing pattern of referendum. It may not be out of place to mention here that a memo is filed before this Court in the earlier proceedings. In that memo also the Corporation has stated that they are making arrangements to hold a referendum in the Corporation. In these circumstances I am not able to accept the defence of the change of pattern as suggested/argued by the Corporation. Such defence, in the circumstances is not tenable on the facts of this case.
50. The Hon'ble Supreme Court in the case of B.S. Minhas v Indian Statistical Institute and Others, has ruled in para 24 that respondent 1 has to follow the bye-laws if the bye-laws have been framed for the conduct of its affairs to avoid arbitrariness. Any administrative action is to adhere to the procedural standards fixed to avoid arbitrariness. Fair play and justice require avoidance of arbitrariness even in the matter of holding a referendum. A referendum has its own significance in industrial employment and industrial laws. Recognition is granted on account of a success in the referendum held by the Corporation. Such rights cannot be watered down by insisting on an arbitrary fixation of 33.3% as in the case. In the circumstances, I am of the view the insistence of 33.3% is arbitrary and requires my interference particularly in the light of the background preceding the present changed method of holding referendum as per the impugned order.
51. In Food Corporation of India Staff Union u Food Corporation of India and Others , the Hon'ble Supreme Court was considering the representative character of three unions. In fact the Hon'ble Supreme Court approved the secret ballot system to yield correct result. The Hon'ble Supreme Court noticed in this judgment as under:– "Collective bargaining is the principal raison d'etre of the trade unions. However, to see that the trade union, which takes up the matter concerning service conditions of the workmen truly represents the workmen employed in the establishment, the trade union is first required to get itself registered under the provisions of Trade Unions Act, 1926. This gives a stamp of due formation of the trade union and assures the mind of the employer that the trade union is an authenticated body; the names and occupation of whose office bearers also become known. But when in an establishment, be it an industry or an undertaking, there are more than one registered trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a union, may not be acceptable to the majority and may not result in industrial

peace. In such a situation with whom the employer should bargain, or to put it differently who should be the sole bargaining agent, has been a matter of discussion and some dispute. The 'check off system' which once prevailed in this domain has lost its appeals; and so, efforts are on to find out which other system can foot the bill. The method of secret ballot is being gradually accepted. All concerned would, however, like to see that this method is so adapted and adjusted that it reflects the correct position as regards membership of the different trade unions operating in one and the same industry, establishment or undertaking". Therefore, in my opinion, the present change smacks arbitrariness and has to be set aside as unreasonable on the facts and circumstances of the case, particularly after all efforts are made to hold a referendum as in the past.

52. Before concluding this case, I must also notice the apprehension of the Corporation with regard to maintaining industrial peace, better service and public efficiency. I do hope that the petitioner by their deeds and action, would prove that such apprehensions are baseless. I do hope that the parties in this petition would do their best to achieve the laudable object of forming the Corporation for maintaining efficient transport service to cater to the needs of the travelling public in this State.
53. In conclusion, I pass the following order:–

(1) Order in W.P. Nos. 7601 to 7603 of 1997.–These writ petitions are allowed. The impugned regulations namely the Amendment of KSRTC Servants (Conduct and Discipline) Regulations, 1971 are struck down as unconstitutional and a writ of mandamus is issued to the respondents not to enforce the impugned Orders No. RTD/14/TRA/97, dated 13-2-1997 as at Annexure-A, Annexures to the Government Order No. RTD/14/TRA/97, dated 13-2-1997 as at Annexure-B, No. RTD/15/TRA/97, dated 13-2-1997 as at Annexure-C, Annexure to the Government Order No. RTD/15/TRA/97, dated 13-2-1997 as at An-nexure-D all issued by the Under Secretary to Government, Home and Transport Department, Government of Karnataka, Bangalore and Circular No. 999 issued under letter No. KST:CO:ADM:SR:23 7:332:96-97, dated 17-2-1997 as at Annexure-E issued by Vice-Chairman and Managing Director, KSRTC (respondent 2) are quashed.

(2) Order in W.P. Nos. 23990 and 23991 of 1997 connected with W.P. No. 36331 of 1997:

(3) I allow these petitions – W.P. Nos. 23990 and 23991 of 1997. Annexure-A is set aside with a direction to the Corporation to hold a referendum as before and without reference to Annexure-A and complete the referendum within three months from today. The referendum is to be conducted by Sri Manjunatha Shastry, if available and if he is not available, both the parties are to approach the Labour Secretary who in turn shall provide a suitable officer of the rank of a Deputy Labour Commissioner of the Department in place of Sri Manjunatha Shastry to complete the referendum.

(4) A writ in the nature of declaration is granted to the effect that the petitioner is continued to be a recognised Union.
(5) Insofar as the prayer for check off is concerned, the said relief cannot be granted in these petitions. Parties are to await the decision in W.P. No. 31387 of 1999 with regard to the facility of check off.
(6) In view of my findings in W.P. Nos. 23990 and 23991 of 1997 no order need be passed in W.P. No. 36331 of 1997.
(7) No cost.