Sukhdev Singh, Oil & Natural Gas ... vs Bhagat Ram, Association Of Clause Ii. ... on 21 February, 1975

Equivalent citations: AIR1975SC1331, [1975(30)FLR283], 1975LABLC881, (1975)ILLJ399SC, (1975)1SCC421, [1975]3SCR619

Author: K.K. Mathew

Bench: A.N. Ray, K.K. Mathew, Y.V. Chandrachud, A. Alagiriswami, A.C. Gupta

JUDGMENT

1. There are two questions for consideration in these appeals. First, whether an order f

2. The statutes for consideration are the Oil and Natural Gas Commission Act, 1956; the

3. The Oil and Natural Gas Commission Act, 1959 hereinafter referred to as the 1959 Act

4. Sections 31 and 32 of the 1959 Act are important. Section 31 states that the Central

5. under Section 32 of the 1959 Act the Commission may, with the previous approval of th

6. The Life Insurance Corporation Act, 1956 hereinafter referred to as the 1956 Act esta

7. The two important sections of 1956 Act are Sections 48 and 49. Section 48 states that

8. Section 49 of the 1956 Act states that the Corporation may, with the previous approva

9. The Industrial Finance Corporation Act, 1948 hereinafter referred to as the 1948 Act

10. The contentions on behalf of the State are these. Regulations are framed under power

11. The contentions on behalf of the employees are these. Regulations are made under the

12. Rules, Regulations, Schemes, Bye-laws, orders made under statutory powers are all co

13. In England the Statutory Instruments (Confirmatory Powers) Order, 1947 contemplates

14. Subordinate legislation is made by a person or body by virtue of the powers conferre

15. The words "rules" and "regulations" are used in an Act to limit the power of the sta

16. In England subordinate legislation has, if validly made, the full force and effect o

17. Subordinate legislation has, if validly made, the full force and effect of a statute

18. The authority of a statutory body or public administrative body or agency ordinarily

19. The process of legislation by departmental regulations saves time and is intended to

20. The justification for delegated legislation in threefold. First, there is pressure o

21. The characteristic of law is the manner and procedure adopted in many forms of subor

22. Another characteristic of law is its content. Law is a rule of general conduct while

23. The noticeable feature in that these statutory bodies have no free hand in framing t

24. Broadly stated, the distinction between rules and regulations on the one hand and ad

25. The Additional Solicitor General submitted that regulations could not have the force

26. The character of regulation has been decided by this Court in several decisions. One

27. In Naraindas Barot's case this Court held that the termination of services by Corpor

28. In Tewari's case the termination of the employment of Tewari was challenged on the g

29. In the Life Insurance Corporation case, there were regulations framed under the Act.

30. In the Indian Airlines Corporation case this Court said that there being no obligati

31. In U.P. Warehousing Corporation and Indian Airlines Corporation cases the terms of t

32. In Sirsi Municipality v. Cecelia Kom Francis Tellis (supra), the dismissal was held

33. There is no substantial difference between a rule and a regulation inasmuch as both

34. On behalf of the State it is contended that these Corporations cannot be said to be

35. The State undertakes commercial functions in combination with Governmental functions

36. This Court in Rajasthan State Eletricity Board, Jaipur v. Mohan Lal and Ors. (1967)

37. The concurring Judgment in the Rajasthan Electricity Board case said that the Board

38. In the British Broadcasting Corporation v. Johns (Inspector of Taxes) (1965) 1 Ch. 3

39. A public authority is a body which has public or statutory duties to perform and whi

40. The Oil-fields (Regulation and Development) Act, 1948 defines "oilfield" as any area

41. The 1959 Act speaks in Section 14 of the functions of the Commission and in Section

42. Section 23 of the 1959 Act says that the Oil and Natural Gas Commission shall furnis

43. The Oil and Natural Gas Commission Act. 1959 is an Act to provide for the establishm

44. All these provisions indicate at each stage that the creation, composition of member

45. The Life Insurance Act is an Act to provide for the nationalisation of life insuranc

46. The Corporation is to submit to the Central Government an account of activities duri

47. The provisions of the Life Insurance Corporation Act amply establish that the Corpor

48. The original capital of the Corporation is five crores of rupees provided by the Cen

49. If as a result of any investigation undertaken by the Corporation any surplus emerge

50. The structure of the Life Insurance Corporation indicates that the Corporation is an

51. The Industrial Finance Corporation is a body corporate. The authorised capital of th

52. The Chairman of the Corporation shall be appointed by the Central Government. Four D

53. Where any industrial concern which is under a liability to the Corporation makes any

54. The Corporation shall furnish to the Central Government statement of assets and liab

55. The superintendence and the affairs of the Corporation shall be entrusted to a Board

56. The Corporation may invest its funds in the securities of the Central Government or

57. The Central Government may issue directions to auditors requiring them to report to

58. The Central Government may decide to acquire the shares held by the shareholders oth

59. These provisions of the Industrial Finance Corporation Act show that the Corporation

60. The Oil and Natural Gas Commission is owned by the Government. It is a statutory bod

61. The Life Insurance Corporation is owned by the Government The life insurance busines

62. The Industrial Finance Corporation is under the complete control and management of t

63. In the background of the provisions of the three Acts under consideration, the quest

64. The Oil and Natural Gas Commission Act confers power of entry on employees of the Co

65. The Life Insurance Act provides that if any person lawfully withholds or fails to de

66. The Industrial Finance Corporation Act states that whoever in any bill of lading, wa

67. For the foregoing reasons, we hold that rules and regulations framed by the Oil and

68. In Civil Appeal No. 2137 of 1972, the declaration granted by the High Court that the

69. In Civil Appeal No. 1655 of 1973, the writ of mandamus granted by the High Court is

70. In Civil Appeal No. 1879 of 1972, our conclusion is that the Corporation is an autho

71. In Civil Appeal No. 115 of 1974, the judgment of the High Court is set aside. The Fi

72. The appeals are disposed of accordingly.

73. The parties will pay and bear their own costs in all these appeals.

K.K. Mathew, J.

74. The question whether a public corporation of the nature of Oil and Natural Gas Commission, Life Insurance Corporation or Industrial Finance Corporation is a 'state' within the meaning of Article 12 of the Constitution is one of far reaching importance.

75. The relevant provisions of the Oil and Natural Gas Commission Act, 1939, have been analysed in the judgment of my Lord the Chief Justice and I do not think it necessary to set them out here.

76. In Rajasthan Electricity Board v. Mohan Lal this Court had occasion to consider the question whether the Rajasthan Electricity Board was an authority within the meaning of the expression "other authorities" in Article 12 of the Constitution. Bhargava, J. delivering the judgment for the majority pointed out that the expression "other authorities" in Article 12 would include all Constitutional and statutory authorities on whom powers are conferred by law. The learned judge also said that if any body of persons has authority to issue directions, the disobedience of which would be punishable as a criminal offence, that would be an indication that that authority is 'state'. Justice Shah who delivered a separate judgment agreeing with the conclusion reached by the majority preferred to adopt a slightly different meaning to the words "other authorities". He said that authorities, Constitutional or statutory, would fall within the expression 'state' as defined in Article 12 only if they are invested with sovereign power of the State, namely, the power to make rules or regulations which have the force of law.

77. The test propounded by the majority is satisfied so far as the Oil and Natural Gas Commission (hereinafter referred to as 'the Commission) is concerned as Section 25 of the Oil and Natural Gas Commission Act (hereinafter referred to as 'the Act') provides for issuing binding issue binding directions to third parties not to prevent the employees of the Commission from entering upon their property if the Commission so directs. In other words, as Section 25 authorises the Commission to issue binding directions to third parties not to prevent the employees of the Commission from entering into their land and as disobedience of such directions is punishable under the relevant provision of the Indian Penal Code since those employees are deemed to be public servants under Section 21 of the Indian Penal Code by virtue of Section 27 of the Act, the Commission is an 'authority' within the meaning of the expression "other authorities" in Article 12.

78. Though this would be sufficient to make the Commission a 'state' according to the decision of this Court in the Rajasthan Electricity Board Case (supra), there is a larger question which has a direct bearing so far as the other two Corporations are concerned viz., whether, despite the fact that there are no provisions for issuing binding directions to third parties the disobedience of which would entail penal consequence, the corporations set up under statutes to carry on business of public importance or which is fundamental to the life of the people can be considered as 'state' within the meaning of Article 12 That Article reads.

In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

It is relevant to note that the Article does not define the word 'state'. It only provides that 'state' includes the authorities specified therein. The question whether a corporation set up under a statute to carry on a business of public importance is a 'state' despite the fact that it has no power to issue binding directions has to be decided on other considerations.

79. One of the greatest sources of our strength in Constitutional law is that we adjudge only concrete cases and do not pronounce principles in the abstract. But there comes a moment when the process of empiric adjudication calls for more rational and realistic disposition than that the immediate case is not different from preceding cases.

80. The concept of state has undergone drastic changes in recent years. Today state cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation.

If we clearly grasp the character of the state as a social agent, understanding it rationally as a form of service and not mystically as an ultimate power, we shall differ only in respect of the limits of its ability to render service. (see Mac Iyer, "The Modern State", 183).

81. To some people state is essentially a class-structure, an organisation of one class dominating over the other classes'; others regard it as an organisation that transcends all classes and stands for the whole community. They regard it as a power-system. Some view it entirely as a legal structure,

either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community 'organized for action under legal rules'. Some regard it as no more than a mutual insurance society, "others as the very texture of all our life. Some class the stale as a great 'corporation' and others consider it as indistinguishable from society itself Mac. Iyer, "The Modern State", pp. 3-4.

82. Part IV of the Constitution gives a picture of the services which the state is expected to undertake and render for the welfare of the people. Article 298 provider, that the executive power of the Union and State extends to the carrying on of any business or trade. As I said, the question for consideration is whether a public corporation set up under a special statute to carry on a business or service which Parliament thinks necessary to be carried on in the interest of the nation is an agency or instrumentality of the State and would be subject to the limitations expressed in Article 13(2) of the Constitution. A state is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the state acting through a corporation and making it an agency or instrumentality of the State.

83. The chartered corporations of the 17th, 13th and 19th centuries were expected, perhaps required, to perform stated duties to the community like running a ferry, founding a colony or establishing East: Indian trade. Performance of these functions and securing whatever revenue the enterprise made to the Crown were the primary reasons why a charter was granted. Corporation in early English Law were in fact, and in legal cognizance, a device by which the political state got something done. They were far more like the bodies corporate we call 'public authorities' today. Few in the 17th or 18th century would have disputed that such a corporation was an agency of the state generally "The Modern Corporation and Private Property". Berle & Means, pp. 119-128.

84. The Supreme Court of the United States in McCullough v. Maryland 4 Wheat. 315 (US 1819) held that the Congress has power to charter corporations as incidental to or in aid of governmental functions. So far as federal corporations are concerned, they are, by hypothesis, agencies of government. With this premise it would follow that action of a federally chartered corporation would be governed by the Constitutional limitation imposed on an agency of the Federal Government Adolf A. Berle, "Constitutional Limitations on Corporate Activity" Protection of Personal Rights from Invasion through Economic Power", 100 Univ. of Pennsylvania Law Rev. 933.

85. The tasks of government multiplied with the advent of the welfare state and consequently, the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a "specialised and highly technical character. At the same time, 'bureaucracy' came under a cloud. The distrust of government by civil service, justified or not, was a powerful factor in the development of a policy of public administration through separate corporations which would operate largely according to business principles and be separately accountable.

86. The public corporation, therefore, became 3 third arm of the Government. In Great Britain, the conduct of basic industries through giant corporation is now a permanent feature of public life.

87. A public corporation is a legal entity established normally by Parliament and always under legal authority, usually in the form of a special statute, charged with the duty of carrying out specified governmental functions in the national interest, those functions being confined to a comparatively restricted field, and subjected to control by the executive, while the corporation remains juristically an independent entity not directly responsible to Parliament Garner : "Public Corporations in the United Kingdom" in "Government Enterprise" ed. W. Friedmann & J. F. Garner, p. 4. P. A public corporation is not generally a multi-purpose authority but a functional organisation created for a specific purpose. It has generally no shares or shareholders. Its responsibility generally is to Government. Its administration is in the hands of a Board appointed by the competent Minister. The employees of public corporation are not civil servants. It is. in fact, likely that in due course a special type of training for specialized form of public service will be developed and the status of the personnel of public corporation may more and more closely approximate to that of civil service without forming part of it. In so far as public corporations fulfil public tasks on behalf of government, they are public authorities and as such subject to control by government.

88. In France, "An enterprise publique is an enterprise the whole or the majority of whose capital belongs to the State or other public agencies. By reason of its industrial or commercial activities it is basically subject to private law (and particularly to commercial law) as are private enterprises, but, because of its public nature, it finds itself subjected to a certain degree of dependence on and control by public authorities" "Government Enterprise", ed. W. Friedmann &. J. F. Gamer, pp. 107-108.

89. The motivation for the creation of public corporation naturally plays much larger part in under-developed and poor countries than in industrially advanced countries. This accounts for the emergence of public corporations and the present significance of public enterprise carried on by them. The Government of India resolution on industrial policy dated April 6, 1948 stated, among other things, that "management of state enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this. The Government of India Resolution on Industrial Policy dated April 30, 1956 stated : "Government in Business", S.S. Khera, p. 368 & p. 373 Accordingly, the State will progressively assume a predominant and direct responsibility for setting up new industrial undertakings and for developing transport facilities. It will also undertake State trading on an increasing scale.

90. The Constitution was framed on the theory that limitation should exist on the exercise of power by the State. The assumption was that the State alone was competent to wield power. But the essential problem of liberty and equality is one of freedom from arbitrary restriction and discrimination whenever and however imposed. The Constitution, therefore, should, wherever possible, be so construed as to apply to arbitrary application of power against individuals by centers of power. The emerging principle appears to be that a public corporation being a creation of the State is subject to the Constitutional limitation as the State itself. The pre-conditions of this are two, namely, that the corporation is created by State, and, the existence of power in the corporation to invade the Constitutional right of individual.

91. The advocates of pluralism like Laski and Dr. Figgis pleaded for recognition of social groups within the state in mitigation of the legal and ideological, deification of the State. Today, probably the giant corporations, the labour unions, trade associations and other powerful organisations have taken the substance of sovereignty from the state. We are witnessing another dialectic process in history namely, mat the sovereign state having taken over all effective legal and political power from groups surrendered its power to the new massive social groups W. Friedmann, "Law in a Changing Society", p 298. The growing power of the industrial giants, of the labour unions and of certain other organized groups, compels a reassessment of the relation between group power and the modern state on the hand and the freedom of the individual on the other. The corporate organisations of business and labour have long ceased to be private phenomena. That they have a direct and decisive impact on the social, economic and political life of the nation is no longer a matter of argument. It is an undeniable fact of daily experience. The challenge to the contemporary lawyer is to translate the social transformation of these organisations from private associations to public organisms into legal terms. In attempting to do so, we have to recognize that both business and labour currently exercise vast powers. First, they have power over the millions of men and women whose lives they largely control as employees or as members. Second, they exercise power more indirectly, though not less powerfully, over the unorganized citizens whose lives they largely control through standardized terms of contract, through price policy, through the tempo of production and the terms and conditions of labour. Last, they exercise control over the organized community, represented by the organs of State, in a multitude of ways; direct lobby pressures, control over election and policies of the elected representatives of the peoples and far-reaching control over the mass media of communication. In this sense 'government' or 'law-making' by private groups is today an irreversible fact "Corporate Power, Government by Private Groups and the Law' 57 Columbia Law Rev 156, at 156, 176-177.

92. Generally speaking, large corporations have power and this power does not merely come from the statutes creating them. They acquire power because they produce goods or services upon which the community comes to rely. The methods by which these corporations produce and the distribution made in the course of their production by way of wages, dividends and interest, as also the profit withheld and used for further capital progress and the manner in which and the conditions under which they employ their workmen and staff are vital bath to the Jives of many people and to the continued supply line of the country. Certain imperatives follow from this. Both big business and big labour unions exercise much quasi-public authority. The problems posed by the big corporation is the protection of the individual rights of the employees. Suggestions are being made that the corporate organisations of big business and labour arc no longer private phenomena; that they are public organisms and that Constitutional and common law restrictions imposed upon State agencies must be imposed upon them.

93. The governing power wherever located must be subject to the fundamental Constitutional limitations. The need to subject the power centers to the control of Constitution require an expansion of the concept of State action. The historical trend in America of judicial decisions has been that of bringing more and more activity within the reach of the limitations of the Constitution. "The next step would be to draw private governments into the tent of state action. This is not a particularly startling proposition, for a number of recent cases have shown that the concept of

private action must yield to a conception of state action where public functions are being performed" Arthur S. Miller : "The Constitutional Law of the 'Security State'.". 10 Stanford Law Rev. 620 at 664.

94. In Marsh v. Alabama 326 U.S. 501 (1946), a corporation owned a 'company town'. Marsh, a Jehovah's witness offered his pamphlets preached his doctrine on one of the town corners. He was arrested for trespassing by one of the company guards, was fined five dollars and the case went all the way up to the Supreme Court. On straight property logic, Marsh, of course was trespassing; he was an unwanted visitor on company's Veal estate. But, Court said, operation of a town is a public function. Although private in the property sense, it was public in the functional sense. The substance of the doctrine there laid down is that where a corporation is privately performing a 'public function' it is held to the Constitutional standards regarding civil right and equal protection of the laws that apply to the state itself. The Court held that administration of private property such a town, though privately carried on, was, nevertheless, in the nature of a 'public function', that the private rights of the corporation must therefore be exercised within Constitutional limitations, and the conviction for trespass was reversed.

95. But how far can this expansion go? Except in very few cases, our Constitution does not, through its own force, set any limitation upon private action. Article 13(2) provides that no State shall make any law which takes away or abridges the right guaranteed by Part III. It is the State action of a particular character that is prohibited. Individual invasion of individual right is not, generally speaking, covered by Article 13(2). In other words, it is against State action that fundamental rights are guaranteed. Wrongful individual acts unsupported by State authority in the shape of laws, customs, or judicial or executive proceeding are not prohibited. Articles 17, 23 and 24 postulate that fundamental rights can be violated by private individuals and that the remedy under Article 32 may be available against them. But, by and large, unless an act is sanctioned in some way by the State, the action would not be State action. In other words, until some law is passed or some action is taken through officers or agents of the State, there is no action by the State. In the Civil Rights Cases 109 U. Section 3 Bradley, J. speaking for the majority, took this view of the 14th Amendment. That Amendment provides :

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

96. On the other hand, Justice Harlan tried to justify the imposition of civil liability for racial discrimination, effected not only by the normal officers of the State, but also by private individuals. He perceived State action in rules and practices of hotels, inns, taverns, rail roads and places of amusement. He said that inn-keepers are exercising a quasi-public employment and that law gives them special privileges and they are charged with certain duties and responsibilities to the public. As to public conveyances, he read the law of common carriers to require the performance of public duties, and that no matter who is the agent or what is the agency, the function to be performed is that of 'State'. The investiture of rail toad with power of eminent domain made the function of the rail road corporation a public function. I think the later decisions of courts in the U.S.A. follow the

lead given by Justice Harlen in his dissenting Judgement. Several tests have been propounded to find out whether an action is private or state action. These decision do not rest on the basis that the entity or organization must wield authority in the sense it must have power to issue commands in the Austinian sense, or that it must have the sovereign power to pass laws or regulations having the force of law.

97. Does any amount of state help, however inconsequential, make an act something more than an individual act ? Suppose, a privately owned and managed operation deceives direct financial aid from the State, is an act of such an agency an act of State ? It would be difficult to give a categorical answer to this question. Any operation or purpose of value to the public may be encouraged by appropriation of public money and the resulting publicly supported operation can be characterized as a state operation. But such a rule would seem to go to the extreme. There seems to be no formula which would provide the correct division of cases of this type into neat categories of State action and private action. Some clue however, to the considerations which might impel the court in one direction or the other may be obtained from an examination of the cases in this area. The decisions of the State courts in U.S.A. seem to establish that a private agency, if supported by public money for its operation would be 'state'. But in all these cases, it has been found that there was an element of control exercised by the State. Therefore, it may be stated generally that State financial aid alone does not render the institution receiving such aid a state agency. Financial aid plus some additional factor might lead to a different conclusion. A mere finding of state control also is not determinative of the question, since a state has considerable measure of control under its police power over all types of business operations. It is not possible to assume that the panoply of law and authority of a state under which people carry on ordinary business, or their private affairs or own property, each enjoying equality in terms of legal capacity would be extraordinary assistance. A finding I of state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action.

98. Another factor which might be considered is whether the operation is an important public function. The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a state agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a government agency, then even the presence or absence of state financial aid might be irrelevant in making a finding of state action. If the function does not fall within such a description, then mere addition of state money would not influence the conclusion.

99. The state may aid a private operation in various ways other than by direct financial assistance. It may give the organization the power of eminent domain, it may grant tax exemptions, or it may give it a monopolistic status for certain purposes. All these are relevant in making an assessment whether the operation is private or savours of state action generally "The Meaning of State Action", LX Columbia Law Rev. 1083.

100. An important case on the subject is Kerr v. Enoch Pratt Free Library 149 F. 2d 212 (4th cir.) cert. denied 326 U.S. 721 (1945). The library system in question was established by private donation in 1882, but by 1944, 99 per cent of the system's budget was supplied by the city; title to the library

property was held by the city; employees were paid by the city pay-roll officer; and a high degree of budget control was exercised or available to the city government. On these facts the Court of Appeals required the trustees Managing the system to abandon a discriminatory admissions policy for its library training courses LX Columbia Law Review 1083, at 1103.

101. Dorsev v. Stuvvesant Town Corporation 299 N. Y. 512 related to the problem raised by discriminatory action by a private agency receiving state financial aid. Pursuant to New York's redevelopment laws, the Metropolitan Life Insurance Company organized a redevelopment corporation to participate in a plan to construct housing. By an investment of some $ 90,000,000, the company constructed a complex of apartments capable of housing 25,000 people. The power of eminent domain was used to acquire the necessary land and partial tax exemption was granted for the completed project. As a part of the cooperative effort by the city and the private company, the plans for the project were subject to approval of the city and the company's profits, dividends, and power to dispose of the property were subjected to regulation by state law. When prospective Negro tenants were rejected by the company, they sued to enjoin discrimination as a violation of the Fourteenth Amendment. The majority of the New York Court of Appeals found no exertion of state power directly in aid of discrimination and decided that the private company was not engaged in a governmental function. Fuld, J. dissented. He said that even the conduct of private individuals would offend against the equal protection clause if the conduct appears in an activity of public importance and if the state has accorded to the activity, either the panoply of its authority or the weight of its power, interest and support the Note in XXXV Cornell Law Quarterly, 399.

102. In America, corporations or associations, private in character, but dealing with public rights, have already been held subject to constitutional standards. Political parties, for example, even though they are not statutory organisations, and are in form private clubs, are within this category. So also are labour unions on which statutes confer the right of collective bargaining. Thus, in Steel v. Louisville & Nashville R R 323 U.S. 192, 198 it was observed :

> If... the (Railway Labour) Act confers this power on the bargaining representative of a craft... without any commensurate statutory duty towards its members, Constitutional questions arise. For the representative is clothed with power not unlike that of a legislature which is subject to Constitutional limitations on its power to deny, restrict, destroy, discriminate against the rights of those for whom it legislates and which is also under an affirmative Constitutional duty equally to protect those rights.

103. Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function performed government agencies the decisions in Terry v. Adams 273 U. Section 536 & Nixon v. Condon 286 U.S. 73. Activities which are top fundamental to the society are by definition too important not to be considered government function. This demands the delineation of a theory which requires government to provide all persons with all fundamentals of life and the determinations of aspects which are fundamental. The state today has an affirmative duty of seeing that all essentials of life are made available to all persons. The task of the state today is to make possible the achievement of a Good life both by removing obstacles in the path of such

achievements and in assisting individual in realizing his ideal of self-perfection Assuming that indispensable functions are government functions, the problem remains or defining the line between fundamentals and non-fundamentals. The analogy of the doctrine of "businesses affected with a public interest" immediately comes to mind. The difficulty here is well stated by Justice Holmes in Tyson and Brother v. Banton 272 U.S. 418. 447 dealing with the Constitutionality of a New York statute which limited the fees charged by theatre ticket brokers :

> But if we are to yield to fashionable conventions, it seems to me that theatres are as much devoted to public use as anything well can be... (T)o many people the superfluous is the necessary, and it seems to me that government does not no beyond its sphere in attempting to make life livable for them.

104. The difficulty of separating vital government functions from non-government functions has created further difficulties. Is the distinction between governmental and non-governmental functions which plagued the courts a rational one ? The contrast is between governmental activities which are private and private activities which are governmental. Without the adoption of a radical laissez faire philosophy and the definition of state functions as they were current in the days of Herbert Spencer it is impossible to sort out proper from improper functions. Besides the so-called traditional functions, the modern state operates a multitude of public enterprises. Mr. Justice Holmes said, the Constitution does not enact Herbert Spencer's social statics. This applies equally to the definition of state function for legal purposes.

105. In New York v. United States 326 U.S. 572, the question was whether the state of New York was liable to the federal tax on mineral waters from state-owned and state-operated Saratoga Springs. The judgments of both the majority and the minority agree on the uselessness of the test laid down in Ohio v. Helvering 292 U. S. 360, 366 that liability to taxation depended upon the distinction between state as government and state as trader. Frankfurter, J. said :

> When this Court came to sustain the federal taxing power upon a transportation system operated by a State, it did so in ways familiar in developing the law from precedent to precedent. It edged away from reliance on a sharp distinction between the 'governmental' and the 'trading' activities of a State, by denying immunity from federal taxation to a State when it "is undertaking a business enterprise of a sort that is normally within the reach of the federal taxing power and is distinct from the usual governmental functions that are immune from federal taxation in order to safe-guard the necessary independence of the State". Helvering v. Powers 293 U.S. 214 at 227. But this likewise does not furnish a satisfactory guide for dealing with such a practical problem as the Constitutional power of the United States over State activities. To rest the federal taxing power on what is 'normally' conducted by private enterprise in contradiction to the 'usual' governmental functions is too shifting a basis for determining Constitutional power and too entanged in expediency to serve as a dependable legal criterion, The essential nature of the problem cannot be hidden by an attempt to separate manifestations of indivisible governmental powers.

106. Douglas, J. 326 U.S. 572 , at 591 :

> A State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise. or conducted for profit. Cf. Helvering v. Gerhardt 304 US 405, 426, 427. A state may deem it as essential to its economy that it own and operate a railroad, a mill, or an irrigation system as it does to own and operate bridges, street lights, or a sewage disposal plant. What hight have been viewed in an earlier day as an improvident or even dangerous extension of state activities may today be deemed indispensable. But as Mr. Justice White said in his dissent in South Caroling v. United Slates, any activity in which a State engages within the limits of its police power is a legitimate governmental activity.

107. In Pfizer v. Ministry of Health [1964] 1 Ch. 614, at p. 641 (affirmed 1965 A.C. 512), Willmer L. J. in the Court of Appeal has recognized that in mid-Victorian times the treatment of patients in hospitals would have been regarded as 'something quite foreign to the functions of government' but added that since then there had been 'a revolution in political thought, and a totally different conception prevails today as to what is and what is not within the functions of government'.

108. It has taken English and American Courts many years to concede that the exercise of an industrial or commercial activity on behalf of the State does not deprive such activity of its 'governmental' character. But a great many anomalies in common law remain, in particular as regards the immunities and privileges of the Crown in such matters, immunity from the binding force of statute, debt priority, freedom from taxes and other public charges. The recent English cases, appear, at long last, to move towards the abandonment of the totally antiquated notions of 'proper' functions of government.

109. In the light of this discussion let us see whether the Life Insurance Corporation and the Industrial Finance Corporation would come within the ambit of 'state'.

110. The relevant provisions of the Life Insurance Corporation Act have been very clearly analysed in the judgment of my Lord the Chief Justice and it is unnecessary to repeat them. It is clear from the provisions that the Central Government has contributed the original capital of the Corporation, that part of the profit of the Corporation goes to that Government, that the Central Government exercises control over the policy of the Corporation, that the Corporation carries on a business having great public importance and that it enjoy a monopoly in the business. I would draw the same conclusions from the relevant provisions of the Industrial Finance Corporation Act which have also been referred to in the aforesaid judgment. In these circumstances. I think, these corporations are agencies or instrumentalities of the 'state' and are, therefore, 'state' within the meaning of Article 12. The fact that these corporations have independent personalities in the eye of law does not mean that they are not subject to the control of government or that they are not instrumentalities of the government. These corporations are instrumentalities or agencies of the state for carrying on businesses which otherwise would have been run by the state departmentally. If the state had chosen to carry on these businesses through the medium of government departments, there would have been no question that actions of these departments would be 'state actions'. Why then should

be actions of these corporations be not state actions ?

111. The Additional Solicitor General submitted that since these corporations have separate personalities, they cannot be regarded as agents or instrumentalities of the state and referred to the decision in Andhra Pradesh State Road Transport Corporation v. The Income Tax Officer and Anr. . The question in that case was whether the Road Transport Corporation constituted under the Road Transport Corporations Act, 1950, was carrying on business on behalf of the State of Andhra Pradesh and that the income of the Corporation was exempt from liability to pay income tax. This Court took the view that the Road Transport Corporation was a corporate body and has a separate personality and, therefore, the business carried on by it was its own business and the State Government had no beneficial interest in the income.

112. The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business ? When it is seen from the provisions of that Act that on liquidation of the Corporation, its assets should be divided among the shareholders, namely, the Central and State governments and others, if any, the implication is clear that the benefit of the accumulated income would go to the Central and State governments. Nobody will deny that an agent has a legal personality different from that of the principal. The fact that the agent is subject to the direction of the principal does not mean that he has no legal personality of his own. Likewise, merely because a corporation has legal personality of its own, it does not follow that the corporation cannot be an agent or instrumentality of the state, if it is subject to control of government in all important matters of policy. No doubt, there might be some distinction between the nature of control exercised by principal over agent and the control exercised by government over public corporation. That, I think is only a distinction in degree. The crux of the matter is that public corporation is a new type of institution which has sprung from the new social and economic functions of government and that it therefore does not neatly fit into old legal categories. In stead of forcing it into them, the later should be adapted to the needs of changing times and conditions.

113. I do not think there is any basis for the apprehension expressed that by holding that these public corporations are 'state' within the meaning of Article 12, the employees of these corporations would become government servants. I also wish to make it clear that I express no opinion on the question whether private corporations or other like organisations, though they exercise power over their employees which might violate their fundamental rights, would be 'state' within the meaning of Article 12.

114. The second question for consideration is whether an order of removal or dismissal from service contrary to the regulations framed by these corporations in the exercise of power conferred in that behalf would enable an employee to a declaration against them for continuance in service or would give rise only to a claim for damages.

115. This will depend upon the question whether the regulations framed by these corporations would have the force of law and even if they have not the force of law, whether the employment is public

employment and, for that reason, the employee would obtain a status which would enable him to obtain the declaration.

116. The learned Chief Justice has dealt with the question in his judgment whether the regulations framed by the corporations have the force of law and he has arrived at the conclusion that the regulations being framed under statutory provisions would have the force of law.

117. Ever assuming that the regulations have no force of law, I think since the employment under these corporations is public employment, an employee would get a status which would enable him to obtain ' declaration for continuance in service if he was dismissed or discharged contrary to the regulations.

118. The original concept of employment was that of master and servant. It was therefore held that a court will not specifically enforce a contract of employment. The law has adhered to the age-old rule that an employer may dismiss the employee at will. Certainly, an employee can never expect to be completely free to do what he likes to do. He must face the prospect of discharge for failing or refusing to do his work in accordance with his employer's directions. Such control by the employer over the employee is fundamental to the employment relationship. But there are innumerable facets of the employee's life that have little or no relevance to the employment relationship and over which the employer should not be allowed to exercise control. It is no doubt difficult to draw a line between reasonable demands of an employer and those which are unreasonable as having no relation to the employment itself. The rule that an employer can arbitrarily discharge an employee with or without regard to the actuating motive is a rule settled beyond doubt. But the rule became settled at a time when the words 'master' and 'servant' were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his later families. The overtones of this ancient doctrine are discernible in the judicial opinion which rationalised the employer's absolute right to discharge the employee. Such a philosophy of the employer's dominion over his employee may have been in tune with the rustic simplicity of by gone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers, The conditions have now vastly changed and it is difficult to regard the contract of employment with large scale industries and government enterprises conducted by bodies which are created under special statutes as mere contract of personal service. Where large number of people are unemployed and it is extremely difficult to find employment, an employee who is discharged from service might have to remain without means of subsistence for a considerably long time and damages in the shape of wages for a certain period may not be an adequate compensation to the employee for non employment. In other words, damages would be a poor substitute for reinstatement. The traditional rule has survived because of the sustenance it received from the law of contracts. From the contractual principle of mutuality of obligation, it was reasoned that if the employee can quit his job at will, then so too must the employer have the right to terminate the relationship for any or no reason. And there are a number of cases in which even contracts for permanent employment, i.e. for indefinite terms, have been held unenforceable on the ground that they lack mutuality of obligation. But these cases demonstrate that mutuality is a high sounding phrase of little use as an analytical tool and it would seem clear that mutuality of obligation is not an inexorable requirement and that lack of mutuality is simply, as many courts

have come to recognize, an imperfect way of referring to the real obstacle to enforcing any kind of contractual limitation on the employer's right of discharge, i.e. lack of consideration. If there is anything in contract law which seems likely to advance the present inquiry, it is the growing tendency to protect individuals from contracts of adhesion, from over-reaching terms often found in standard forms of contract used by large commercial establishments. Judicial disfavour of contracts of adhesion has been said to reflect the assumed need to protect the weaker contracting party against the harshness of the common law and the abuses of freedom of contract. The same philosophy seems to provide an appropriate answer to the argument, which still seems to have some vitality, that "the servant cannot complain, as he takes the employment on the terms which are offered to him" Justice (sic) Mc Anliffe v. new Bedford, 155 Mass. 216.

119. In Malloch v. Aberdeen Corporation (1971) 1 W.L.R. 1578. Lord Wilberforce, in speaking about the anomaly created by judicial decision in the area of contractual and statutory employments, has said :

> A comparative list of situations in which persons have been held entitled or not entitled to a hearing or to observation of rules of natural justice, according to the master and servant test, looks illogical and even bizarre. A specialist surgeon was denied protection which is given to a hospital doctor; a University professor, as a servant has been denied the right to be heard, a dock labourer and an undergraduate have been granted it; examples can be multiplied. One may accept that if there are relationships in which all requirements of the observance of rules of natural justice are excluded (and I do not wish to assume that this is inevitably so), these must be confined to what have been called "pure master and servant cases", which I take to mean cases in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection. If any of these elements exist, then, in my opinion, whatever the terminology used, and even though in some inter partes aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared to be void. at pp. 1595-1596.

120. I think that employment under public corporations of the nature under consideration here is public employment and therefore the employee should have the protection which appertains to public employment.

121. In McClelland v. Northern Ireland Health Board [1957] 2 All E.R. 129 the House of Lords, by a majority, decided that the express term which provided for dismissal in case of misconduct and inefficiency was exhaustive of the grounds of dismissal and, therefore, no further terms as to notice could be implied. Lord Evershed pointed out:

> Much may turn on the premise to a consideration of the meaning of the conditions-whether in a contract of service made in the twentieth century with a statutory board such as the respondent board (whose established officers participate

in the pension scheme contained in regulations promulgated by the Ministry of Health and Local Government of Northern Ireland), it is correct to regard the common law right of a master to determine his servant's engagement as of so well-established and paramount character that the contract should be interpreted as necessarily subject to that right (and to a corresponding right on the part of the servant) so that only the clearest express terms will exclude it.

And he also pointed out that the position of the employer board and one of its servants is very different ; 'The loss or damage to the board occasioned by the departure of one of its servants would, save in very exceptional circumstances, be negligible. To a servant, certainly a servant in the position of the appellant, the security of employment with the board for the period of working life is of immense value." This approach to public employment goes some way towards the reversal of the common law position. In public employment where there is an appointment to a permanent post, there should be presumption that the employee cannot be given notice and the servant can only be dismissed for misconduct or specified reasons. Lord Evershed in interpreting the word 'permanent' in that case said : "it seems to me of considerable importance, in interpreting its use in a contract of service, that such a contract cannot be specifically enforced." This is an orthodox statement of legal principle but it is nevertheless paradoxical to find it in a judgment which supported the majority view that a declaration should be granted. Declaration is not specific performance but it has the same effect in practice where a public authority is concerned which will invariably act in accordance with the law as declared. Declarations that notices of dismissal were invalid have also been grained in the school teacher cases. Sadler v. Sheffield Corporation (1924) 1 Ch. 483; Martin v. Eccles Corporation (1919) 1 Ch. 387; & Hanson v. Radcliffe U.D.C. (1922) 2 Ch. 490

122. In Hanson v. Radclifie U.D.C. (1922) 2 Ch. 490, Lord Sterndale M. R. Said : "The power of the court to make declarations, when it is a question of determining the rights of two parties to a contract, is now almost unlimited, or limited only by the discretion of the court." The discretion which should guide the court must be in tune with the modern conditions of life and should result in reversal of present-day attitude. If a job is regarded as analogous to property, it ought to be recognized that a man is entitled to a particular job just as the courts of Equity acknowledged his right to a particular piece of property. Where a public authority is concerned, this can be implemented by a declaration. In the case of private employment English law has devised no suitable remedy. That this is possible is shown by the example of other countries Wedderburn : "The Worker and the Law" , p. 89 onwards. The Court must, therefore, adopt the attitude that declaration is the normal remedy for a wrongful dismissal in case of public employees which will only be refused in exceptional circumstances. The remedy of declaration should be a ready-made instrument to provide reinstatement in public sector. Once it is accepted that a man's job is like his property of which he can be deprived of for specific reasons, this remedy becomes the primary one though it will need to be reinforced where private individuals are being sued. The law of master and servant has not kept pace with the modem conditions and the mandate of equality embodied in the Constitution. The law still attaches to the servant a status of inferiority and subjection to his master. Though

fundamental reforms can only emanate from the legislature, the principles fashioned by public law if applied to master-servant relationship can bring about a change in law to accord with the social conditions of the 20th Century generally "Public Law Principles Applicable to Dismissal from Employment" by G. Gan , 30 Modern Law Rev. 288.

123. That apart, the regulations framed by these corporations were intended to be binding upon them and were the bases on which the employments were made. As the employments were under corporations created by statutes for carrying on businesses of public importance, they were public employment. And even if the regulations have not got the force of law, I think the principle laid down by Justice Frank-further in Viterelli v. Seaton 359 U.S 536, at 546-547 should govern the situation. He said :

> An executive agency must be rigorously held to the standards by which it professes its action to be judged.... According, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.

124. I agree with the conclusions of my Lord the Chief Justice.

A. Alagiriswami, J.

125. In his judgment in Writ Petition No. 43 of 1972 us Lord the Chief Justice has quoted with approval the decision of this Court in Praga Tools Corp. v. Imannal , Heavy Engin. Mazdoor Union v. Bihar , and S. L. Agarwal v. Hindustan Steel . I may also refer to the decision of this Court in Hindustan Antibiotics v. Workmen . The last one was a Government undertaking incorporated under the Indian Companies Act. The entire equity capital of the company was held by the President of India and his nominees and the entire Board of Directors was nominated by him. Service conditions of the workmen and other matters were subject to the approval of the President of India. It was pointed out by the Constitution Bench of this Court that though the company was a limited one and therefore had a distinct corporate existence, it was in effect financed and controlled by the Central Government. The conduct of the business of the company was subject to the directives issued from time to time by the President of India and its accounts were audited by the auditors appointed by the Central Government on the advice of the Comptroller and Auditor General of India. The annual report of the working of the company and its affairs along with the Audit Report had to be placed before the Parliament. Dividends declared by the company entirely went to the coffers of the State. All the same this Court treated that company like any other company registered under the Indian Companies Act.

126. In Gurushantappa v. Abdul Khaddus the question whether an employee in a company owned by Government was holding an office of profit was considered. It was a private limited company registered under the name of Mysore Iron & Steel Limited. Bhadravati. The shares of the company were held cent per cent by the Mysore Government. Under the Articles of Association of the

company the first Directors of the company were Minister-in-Charge of the Industries Portfolio in the Mysore Government, the Secretaries to the Mysore Government in the Finance Department, and in the Commerce and Industries Department, the Managing Director of the Mysore Iron & Steel Ltd., and the Chief Conservator of Forests of the Mysore Government. The Governor of Mysore was entitled to appoint all or a majority of the members of the Board of Directors so long as the Government of Mysore held not less than 51 per cent of the total paid-up capital of the company or so long as the Governor continued to be interested in any fiduciary capacity. Thus the State Government had considerable control in appointment of Directors of the company as well as in the appointment of the Managing Director who was to be appointed by the Governor from amongst the Directors nominated by him. The Governor was also entitled to appoint from amongst the nominated Directors a Chairman and Vice-Chairman of the Board of DirectOrs. Even the Secretary of the company had to be appointed by the Board of Directors after obtaining approval of the Governor. In respect of other employees of the company, recruitment and service conditions had to be in accordance with the rules which may be prescribed by the Government from time to time. This Court held that the employee was not holding an office of profit under the State Government.

127. In Parga Tools Corporation's case (supra) the company was incorporated under the Indian Companies Act. The Union Government and the Government of Andhra Pradesh between them held 56 per cent and 32 per cent of its shares respectively. The Union Government had the power to nominate the company's directOrs. This Court held that even so, being registered under the Companies Act and governed by the provisions of that Act. the company was a separate legal entity and could not be said to be either a Government corporation or an industry run by or under the authority of the Union Government.

128. In the Heavy Engineering case (supra) the company was one incorporated under the Companies Act. Its entire share capital was contributed by the Central Government and all its shares were registered in the name of the President of India and certain officers of the Central Government. It was, therefore, a Government company. The Memorandum of Association and the Articles of Association of the company conferred large powers on the Central Government including the power to give directions as regards the functioning of the company. The wages and salaries of its employees were also determined in accordance with the said directions. The Directors of the company were appointed by the President. In its standing orders, the company was described as a Government undertaking. In dealing with the question whether the company could be said to be carrying on its business pursuant to the authority of the Central Government this Court observed :

> An incorporated company, as is well known, has a separate existence and the law recognises it as a juristic person, separate and distinct from its members. This new personality emerges from the moment of its incorporation and from that date the persons subscribing to its memorandum of association and others joining it as members are regarded as a body incorporate or a corporation aggregate and the new person begins to function as an entity. (cf. Salomon v. Solomon & Co. [1897] A.C. 22. Its rights and obligations are different from those of its shareholders. Action taken against it does not directly affect its shareholders. The company in holding its property and carrying on its business is not the agent of its shareholders. An

infringement of its rights does not give a cause of action to its shareholders. Consequently, it has been said that if a man trusts a corporation he trusts that legal persons and must look to its assets for payment; he can call upon the individual shareholders to contribute only if the Act or charter creating the corporation so provides. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess only a nominal interest in its property or hold it in trust for him. (cf Halbury's Laws of England, 3rd Ed. Vol. 9, p. 9). Such a company even possesses the nationality of the country under the laws of which it is incorporated, irrespective of the nationality of its members and does not cease to have that nationality even if in times of war it falls under enemy control (cf. Jansan, v. Driefontain Consolidated Mines [1902] A. C. 484 and Kuenigi v. Donnersmarck [1955] 1 Q.B. 516. The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. Therefore, the mere fact that the entire share capital of the respondent-company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the shareholders being, as aforesaid, distinct entities the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government. A notice to the President of India and the said officers of the Central Government, who hold between them all the shares of the company, would not be a notice to the company; nor can a suit maintainable by and in the name of the company be sustained by or in the name of the President and the said officers.

It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a corporation can easily be identified as the agent of the State as in Graham v. Public Works Commissioners [1901] 2 K.B. 781 where Phillimore, J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of a statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct

of the business of the corporation does not render the corporation an agent of the Government, (see The State Trading Corporation of India Ltd. v. The Commercial Tax Officer, Visakhapatnam [l964] 4 S.C.R. 99,188 per Shah, J. and. Tamlin v. Hannaford [1950] 1 K. B. 18, 25-26. Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions (cf. London County Territorial and Auxiliary forces Association v. Nichols [1948] 2 All E. R. 432.

129. In Hindustan Steel case (supra) it was argued before the Constitution Bench that since it was entirely financed by the Government and its management was directly the responsibility of the President, the post was virtually under the Government of India. Hindustan Steel was a Government company and a private limited company. Its Articles of Association as also the Indian Companies Act rendered the ordinary company law inapplicable in certain respects and conferred unlimited powers of management on the President of India and his nominees. It was entirely owned by the Union of India. This Court held that the Hindustan Steel had its independent existence and by the law relating to corporations it was distinct even from its members, though the question for decision therein was whether Article 311 of the Constitution applied to the employee in question.

130. I shall now compare these cases with those relating to the Oil and Natural Gas Commission, the Life Insurance Corporation of India and the Industrial Finance Corporation with which these four appeals are concerned.

131. The Oil and Natural Gas Commission consists of the Chairman, and not less than two, and not more than eight, other members appointed by the Central Government. The Central Government may, if it thinks fit, appoint one of the members as Vice-Chairman of the Commission. The Commission may, for the purpose of performing its functions or exercising its powers, appoint such number of employees as it may consider necessary. The functions and the terms and conditions of service of such employees shall be such as may be provided by regulations made under the 1959 Act. The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the Act and the rules made thereunder, for enabling it to discharge its functions under the Act. The regulations provide inter alia for the terms and conditions of appointment and service and the scales of pay of employees of the Commission; the time and place of meeting of the Commission, the procedure to be followed in regard to the transaction of business at such meetings; the maintenance of minutes of meetings of the Commission and the transmission of copies thereof to the Central Government; the persons by whom, and the manner in which payments, deposits and investments may be made on behalf of the Commission; the custody of moneys required and the maintenance of accounts. The Central Government may amend, vary or rescind any regulation which it has approved; and thereupon the regulation shall have effect accordingly but without prejudice to the exercise of the powers of the Commission under Sub-section (1) of Section 32.

132. The Life Insurance Corporation was established by the Life Insurance Corporation Act, 1956. under Section 49 of the Act the Corporation may, with the previous approval of the Central Government, by notification in the Gazette of India, make regulations not inconsistent with the Act

and the rules made thereunder to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act. The regulations may provide inter alia for the powers and functions of the Corporation which may be delegated to the Zonal Managers; the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents; the terms and condition of service of persons who have become employees of the Corporation under Section 11 of the Act; the number, term of office and conditions of service of members of boards constituted under Section 22 of the Act; the manner in which the Fund of the Corporation shall be maintained the form and manner in which policies may be issued and contracts binding on the Corporation may be executed.

133. The Industrial Finance Corporation was set up by the Industrial Finance Corporation Act, 1948. The superintendence of the business of the Corporation is entrusted to a Board of DirectOrs. The Central Government may make rules in consultation with the Development Bank not inconsistent with the provisions of the 1948 Act and to give effect to the provisions of the Act. Section 43 of the Act enacts that the Board may with the previous approval of the Development Bank regulations not inconsistent with the Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act. The Development Bank means the Industrial Development Bank established under the Industrial Development Act, 1964. The shares of the Central Government in the Corporation shall stand transferred to the Development Bank when the Central Government shall so notify. The regulations provide inter alia for the holding and conduct of elections under this Act including the final decision of doubts or disputes regarding the validity of the election; the manner in which and the conditions subject to which the shares of the Corporation may be held and transferred; the manner in which general meetings shall be convened, the procedure to be followed thereat; the duties and conduct, salaries, allowances and conditions of service of officers and other employees and of advisers and agents of the Corporation.

134. All these Acts confer rule making power on the Central Government and it is not necessary to refer them for the purpose of these cases. It is necessary only to refer to the regulation making power conferred on the three organisations under consideration. On behalf of these organisations the contention advanced was that the regulations relate to internal management, that the terms and conditions of service of employees as laid down in the regulations are not law but merely rules for the purposes of internal management. In so far as the appointments of the various employees of these three organisations are concerned they are appointed by contract and these regulations merely form part of those contracts. On behalf of the employees the contention was that as the source of the power to make regulations is the statute the regulations are themselves law.

135. Under Clause (51) of Section 3 of the General Clauses Act, 1897 "rule" means a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment.

136. Section 20 of the General Clauses Act reads as follows :

> 20. Where, by any Central Act or Regulation, a power to issue any notification, order, scheme, rule, form, or bye-law is conferred, then expressions used in the notification, order scheme, rule, form, or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

The compendious term "Subordinate Legislation" refers to notifications, orders, schemes, rules and bye-laws referred to in Sections 20 and 21 of the General Clauses Act. It would be noticed that the word "order" used in the General Clauses Act is not used in the same sense that word is used in England where orders are excluded from the statutory definition of statutory rules as being administrative. The Committee on Ministers' Powers suggested that regulations should be used for substantive law and rules for procedural law, while orders should be reserved to describe the exercise of executive power or the taking of a judicial or quasi-judicial decision. It would be noticed that this scheme is completely different from the Indian legislative practice. The word "order" very often is used in India for certain types of subordinate legislation for various control orders like the "Rationing Order". There are a number of statutes on the Statute Book in India where the word "regulation" is used to refer to the regulations made by bodies other than the State. The word "rule" is always used to refer to the subordinate legislation made by virtue of powers conferred.

137. The regulations framed under the regulation making power conferred by the three Acts in question are not the regulations as defined in the General Clauses Act. In interpreting Indian statutes it is unnecessary and might sometimes be misleading to refer to the provisions of English law in connection with subordinate legislation. We have to refer only to the General Clauses Act and the Indian Legislative practice. Though "rule" is defined as including a regulation made as a rule, it cannot be said that regulation making power conferred on the three organisations in question is a rule making power. Under the legislative practice in India the rule making power is conferred on the State and the power to make regulations is conferred on bodies or organisations created by the statute.

138. The Air Corporations Act, 1953 which deals with Indian Airlines and Air India International confers power on the Central Government to make rules under Section 44 with regard to terms and conditions of service of the General Managers and such categories of officers as may be specified from time to time under Sub-section (1) of Section 8. Under Sub-section (2) of Section 8 every person employed by each of the Corporations shall be subject to such conditions of service and shall be entitled to such remuneration and privileges as may be determined by regulations made by the Corporation by which ho is employed. under Section 45 the Corporations have the power to make regulations among other things regarding terms and conditions of service of officers and other employees of the Corporation other than the General Manager and officers of any other categories referred to in Section 44.

139. Under the All-India Institute of Medical Sciences Act, 1956 the Central Government has the power to make rules under Section 28. including the power to make rules regarding the conditions of service of members of the Institute, the allowances to be paid to the President and members of the Institute and the number of officers and employees that may be appointed by the Institute and

the manner of such appointment. under Section 29 the Institute has the power to make regulations regarding the allowances, if any, to be paid to the Chairman and the members of the Governing Body and of standing and ad hoc committees and the tenure of office, salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute including teachers appointed by the Institute.

140. On the other hand, under the Central Silk Board Act, 1948 it is the Central Government that has the power to make rules regarding the staff which may be employed by the Board and the pay and allowances, leave and other conditions of service of officers and other employees of the Board. The Board has no power to make regulations.

141. Under the Chartered Accountants Act, 1949 it is the Council that has the power to make regulations about various matters. The Central Government has, however, the power to direct the Council to make any regulations or to amend or revoke any regulations already made within such period as it may specify in this behalf. There is however no rule making power conferred on the Central Government.

142. Under the Indian Coconut Committee Act, 1944 the Central Government has the power to make rules, including many others, the power for regulating grant of pay and leave to officers and servants of the Committee as also the pensions, gratuities, compassionate allowances and travelling allowances. The power of the. Committee to make regulations is, however, very limited and relates only to demanding security from officers and servants of the Committee and the Provident Fund.

143. Under the Coir Industry Act, 1953 the Central Government has power to make rules and the Coffee Board has no power to make any regulations.

144. Under the Coir Industry Act, 1953 the Central Government has the power to make regulations and the Board to make bye-laws regarding the appointment, promotion and dismissal of its officers and other employees other than the Secretary and the creation and abolition of their posts, as well as the conditions of service of its officers and other employees other than the Secretary including their pay, leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a provident fund for them.

145. Under the Cost and Works Accountants Act, 1959 only the Council has the power to make regulations and the Government has no power to make rules.

146. Under the Damodar Valley Corporation Act, 1948 the Central Government has the power to make rules and the Corporation to make regulations among other things regarding making of appointments and promotion of its officers and servants, and specifying other conditions of service of its officers and servants.

147. Under the Dentists Act, 1948 the State Governments alone have the power to make rules including rules regarding the term of office and the powers and duties of the Registrar and other officers and servants of the State Dental Council. The State Councils have no powers to make any

regulations.

148. The Deposit Insurance Corporation Act, 1961 enables the Corporation to make regulations but confers no power on the Government "to make rules.

149. Under the Electricity (Supply) Act, 1948 the State Governments have the power to make rules and the Board makes regulations.

150. Under the Employees' State Insurance Act, 1948 the Central Government has the power to make rules in respect of certain matters and the State Governments in respect of certain other matters, but the Corporation has the power to make regulations regarding the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of officers and servants of the Corporation other than the principal officers. The State Governments have the power to make rules regarding the conditions of service of staff employed in the hospitals, dispensaries and institutions maintained by the Corporation. The important point to note about provisions of this Act is that the regulations made by the Corporation shall be published in the Gazette of India and thereupon shall have effect as if enacted in the Act. It shows that where the Parliament intended that a regulation should have statutory effect it said so specifically. This also illustrates the provision of Clause (51) of Section 3 of the General Clauses Act which defines 'rule' as including a regulation intended to be made as a rule.

151. The Faridabad Development Corporation Act, 1956 confers the power to make rules on the Central Government but no power is given to the Corporation to make any regulations.

152. The Indian Medicine Central Council Act, 1970 confers the power to make rules on the Central Government and the power to make regulations on the Central Council of Indian Medicine including the power to make regulations regarding the tenure of office, and the powers and duties of the Registrar and other officers and servants of the Council and the appointment, powers, duties and procedure of inspectors and visitOrs.

153. The Industrial Development Bank of India Act, 1964 confers powers on the Board of Directors of the Bank to make regulations but no rule making power on the Government.

154. The International Airports Authority Act, 1971 confers power on the Central. Government to make rules and on the Authority to make regulations including regulations regarding the conditions of service and the remuneration of officers and other employees appointed by it.

155. The Khadi and Village Industries Commission Act, 1956 confers the power to make rules on the Central Government and the power to make regulations on the Commission including regulations regarding the terms and conditions of appointment and service and the scales of pay of officers and servants of the Commission other than the Secretary and the Financial Adviser to the Commission which are to be regulated by rules made by the Government.

156. Under the Life Insurance Corporation Act, 1956 the power to make rules is with the Central Government and the power to make regulations with the Corporation.

157. Under the Major Port Trusts Act, 1963 the Central Government has the power to make rules and the Board of Trustees for the Port the power to make regulations including the power regarding the appointment, promotion, suspension, removal and dismissal of its employees, their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare, and the terms and conditions of service of persons who become employees of the Board.

158. The Marine Products Export Development Authority Act, 1972 enables the Central Government to make rules and the Marine Products Export Development Authority to make regulations.

159. The Indian Medical Council Act, 1956 confers power on the Central Government to make rules and on the Council to make regulations including the tenure of office and the powers and duties of the Registrar and other officers and servants of the Council, the appointment, powers, duties and procedure of medical inspectors and visitOrs.

160. The Monopolies and Restrictive Trade Practices Act, 1969 confers the power to make rules on the Central Government and the power to make regulations on the Monopolies and Restrictive Trade Practices Commission.

161. The National Co-operative Development Corporation Act, 1962 confers the power to make rules on the Central Government and the power to make regulations on the Corporation.

162. I have gone through the various statutes only to point out that under the Indian Legislative practice rules are what the Central Government or the State Governments make and the regulations arc made by any institution or organisation established by a statute and where it is intended that the regulation should have effect as law the statute itself says so. It is, therefore, as I stated earlier, unnecessary and may be even misleading to refer to the English practice in interpreting the word 'regulation'.

163. My learned brothers say that the regulations under the Oil & Natural Gas Commission Act provide for the terms and conditions of appointment and service and scales of pay of the employees of the Commission, regulations are imperative and the administrative instruction is the entering into contract with the particular person, but the form and content of the contract is prescriptive and not statutory. Administrative instructions are not necessarily in relation to particular person, they may relate to a whole class of persons even as rules and regulations may. To say that because the regulations contained the terms and conditions of appointment they are statutory is to beg the question. I have extracted the power to make regulations found in the various statutes merely to show that the power to make regulations may be of different kinds. An institution like the Life Insurance Corporation which has its offices and. employees all over the country has necessarily got to have a standard set of conditions of service for its various classes of employees. That is why they are made subject of regulations. But the mere fact that regulations are made in respect of the

conditions of service of the employees of a certain institution or organisation does not moan that those conditions are statutory. No doubt these are the conditions of service applying to their employees. But it there is breach of those conditions it cannot be said that there is a breach of any statutory provision.

164. While rules are generally made by the Government the regulations are made by a body which is a creature of the statute itself with its powers limited by the statute. While rules apply to all matters covered by the statute, the scope of the regulations is narrower being usually confined to internal matters of the statutory body such as the conditions of service of its employees. When regulations standardise the conditions of service of the employees or purport to formulate them, their character is further diluted by the nature of the subject-matter. For, service or employment is basically a contract which is deeply rooted in private law. A mere standardisation or enumeration of the terms of a service contract is not, therefore, ordinarily sufficient to convert it into a statutory status. For, the statute itself is silent and does not confer any security of tenure on the employee. The Corporation has a complete discretion in framing the regulations and giving such protection thereunder to its employees as it thinks fit. The amount of the protection thus depends on their own discretion. It is not given by a mandatory statutory obligation imposed on the corporation from above. For, the corporation can vary the terms of the regulations at any time thus depriving its employees of the security of tenure of service. The matter is thus one between the employee and the employer which is precisely the case of a service contract. A breach of such conditions is therefore a breach of the service contract remediable by damages rather than an ultra vires action to be set aside by a declaration or mandamus.

165. As argued on behalf of the three organisations the regulations arc about the conditions of service which are offered to its employees in the form of a contract. The result of accepting the argument that these powers are statutory would be to hold that the employees of the various organisations and institutions which are governed by the various statutes I have enumerated above would be deemed to have their service conditions fixed by statutes. Even assuming that their conditions of service are fixed by stat ute it does not mean that the removal of an employee contrary to those conditions would necessarily result in the removal having to be declared void. That was the position, for instance, under Section 96-B of the Government of India Act 1919 till Section 240 was introduced in the Government of India Act, 1935. (See Venkat Rao's case, A.I.R. 1937 P.C. 31, and Rangachari's case, AIR 1937 P.C. 27).

166. It does not seem correct to say that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. It is true that they have to offer terms and conditions as laid down in the regulations. But it is incorrect to say that they are not free to frame such terms and conditions as they think proper. They are the authorities to make the regulations and therefore can make any regulations regarding the conditions and terms of service of their employees and also change them as they please. It cannot therefore be said that they are bound by these terms and conditions of service. Indeed there is no obligation on them to make regulations regarding the terms and conditions of service of their employees. It has been held by this Court that in the case of public servants though the Governments have power to make rules under the proviso to Article 309 or undertake legislation regarding terms and conditions of service of Government

servants, they can either by administrative instructions or executive orders also regulate the terms and conditions of their service. Corporations also can do so and even if they make regulations those regulations cannot be said to be law in relation to them. While regulations made by one body which another body is bound to observe can be said to have the effect of law, the regulations which a body makes and can change and which it need not even make cannot be said to have the effect of law in relation to that body.

167. The learned Additional Solicitor General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under the Companies Act. My learned brothers say that the fallacy lies in equating rules and regulations of a company with rules and regulations framed by a statutory body. I do not see where the fallacy lies. A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body makes regulations under the powers conferred by the statute creating that body. Both stand on the same footing as both derive their authority one from the Companies Act and the other from the Act which creates that body, for instance in the case of the Life Insurance Corporation from the Life Insurance Corporation Act, 1956. The fact that a Corporation like the Life Insurance Corporation is created by the statute itself and a company conies into existence in accordance with the provisions of the Companies Act does not make any difference to this situation. Merely because a body happens to be a statutory body it does not become any the less entitled to frame regulations which could be of the same kind as the regulations made by a company. Whether a corporation or a company is created by a statute or under a statute does not make any different to this principle.

168. The logic of the three decisions, the validity of which my learned brothers have accepted in their decision in W.P. No. 43 of 1972, requires that it should be applied to the employees of these three organisations. There is no reason in principle why a different result should follow just because a corporation happens to be established by a statute whereas it is different in the case of a company. Whether an institution or organisation is established by a statute or under a statute in principle there is no difference between their powers. Ultimately unless it should be held that the institution or organisation in question is an 'authority' within the meaning of the term in Article 12 of the Constitution there can be no question of the regulations framed by those organisations being deemed to be law.

169. In order that an institution must be an 'authority' it should exercise part of the sovereign power or authority of the State. See in this connection the definition of the word in the General Clauses Act, which reads as follows :

> "Local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.
>
> They are all concerned with exercising part of the powers of the State. That is why a Port Trust is given even the power to make regulations to provide that a breach of its regulations would be punishable. In such a case it is undoubtedly exercising part of the power of the State, the whole purpose of the provisions of Part III of the

> Constitution is to confer fundamental rights on the citizen as against the power of the State or those exercising the power of the State. None of these corporations do so and so they cannot be the 'State' or 'authority'.

170. The case in British Broadcasting Corpn. v. Johns 1965 (1) Ch. 32 is very much in point. It is not necessary to burden this judgment by quoting extensively from that decision. It. was held there that the B.B.C. was not an instrument of Government. It was argued in that case that the Crown was entitled to a monopoly of broadcasting and therefore the Government purposes also include non-traditional provinces of Government if the Crown has Constitutionally asserted that they are to be within the province of Government. Willmer, L.J. quoted with approval the remarks of Wilberforce, J. against whose judgment the Court of Appeal was being heard, to the effect :

> So I come to the conclusion that however widely one may be inclined to extend the conception of an act or function of government the Crown has not taken the path of engaging itself in a broadcasting service or of entrusting it to any agent. It has deliberately chosen the alternative of an independent instrument.
>
> There can be no doubt that that is the position in respect of the three corporations we are dealing with.

171. The distinction between governmental functions and commercial functions is, therefore, clear enough. Even in the United States of America this distinction is clearly kept in mind. In New York v. United States 90 L. ed. 326 it was remarked :

> That there is a Constitutional line between the State as government and the State as trader, was still more recently made the basis of a decision sustaining a liquor tax against Ohio. "If a state chooses to go into the business of buying and selling commodities, its right to do so may be conceded so far as the Federal Constitution is concerned; but the exercise of the right is not the performance of a governmental function. When a state enters the market place seeking customers it divests itself of its quasi sovereignty protanto, and takes on the character of a trader so far, at least, as the taxing power of the federal government is concerned." Ohio v. Helvering, supra 292 US at 369, 78 L. ed 1310, 54 S Ct 725. When the Ohio Case was decided it was too late in the day not to recognize the vast extension of the sphere of government, both State and national, compared with that with which the Fathers were familiar. It could hardly remain a satisfactory Constitutional doctrine that only such State activities are immune from federal taxation as were engaged in by the States in 1787. Such a static concept of government denies its essential nature. "The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exegencies of the state as they arise. It is the science of experiment." Anderson v. Dunn. 6 Wheat. (U.S.) 204, 226, 5 L. ed. 242, 247.

> When this Court came to sustain the federal taxing power upon a transportation system operated by a State, it did so in ways familiar in developing the law from precedent to precedent. It edged away from reliance on a sharp distinction between the "governmental" and the "trading" activities of a State, by denying immunity from federal taxation to a State when it "is undertaking a business enterprise of a sort that is normally within the reach of the federal taxing power and is distinct from the usual governmental functions that are immune from federal taxation in order to safeguard the necessary independence of the State." Halvering v. Powers, supra 293 US at 227, 79 L. ed. 296, 55 S Ct 117.
>
> It is, therefore, clear that Article 298 of the Constitution cannot be resorted to for supporting the proposition that when the State enters into non-governmental activities that should also be considered to be a governmental function. In this connection the history of Article 298 as it is at present may be noted.

172. In Ranjit Kumar Chatterjee v. Union India Basu, J. dealing with similar contention advanced before him, observed as follows :

> (iii) Mr. Dutt, for the petitioner relied strongly upon the provision in Article 298, as amended by the Constitution (Seventh Amendment) Act, 1956, to argue that when Government takes up a business, it does so in the exercise of its 'executive power' and, therefore, whatever be the agency through which Government may carry on a business, that is identified with the Government.

This argument, however, overlooks the object and scope of the Amendment of the Article. Prior to this amendment, it was held in some cases that since there was no express provision empowering the Government to enter into a trade, this could not be done without legislative sanction-Moti Lal v. State of U.P. . This view was overruled by the Supreme Court in the case of Ram Jawaya v. State of Punjab and the Amendment of 1956 simply codifies the effect of the decision in Ram Jawaya's case () namely, that legislation is not required to empower a Government to carry on a business, it can do so in the exercise of its executive power, except, of course, where a law is required by some other provision of the Constitution, say, Article 19(6). But the effect of the amendment is not to convert a commercial function of the Government into a governmental function. It is to be noted that even where a Stale Government carries on a business, it cannot be treated as a governmental function to claim immunity from Union taxation, without a declaration by Parliament by law under Article 289(3)-vide . If the Central Government carries on a business, it can never be treated as a governmental function to claim immunity from State taxation because Article 285(1) simply speaks of 'the property of the union' and no business.

It has been held by the Supreme Court that even when the Government carries on a business departmentally as in the case of Railway, it cannot be treated as a 'sovereign function' for the purpose of 'suability'. But that principle would not apply for the purpose of determining the status of its employees under Article 311. When the business is carried on by a Department of the Government, as in the case of Railways, obviously, the employees hold under the Government and

not under any separate juristic entity, and so it has been held in numerous cases of Parshotam v. Union of India , Moti Ram v. N.E.F. Rly. . The reason is obvious, namely, where the employer is a Department of the Government, no question of a separate legal entity arises.

The question, however, becomes different, where the business is carried on through a separate legal person, e.g. a statutory corporation or a company (vide) because in such a case, the employee is a servant of a legal entity other than the Government.

173. The reference to Article 297 of the Constitution in relation to the Oil & Natural Gas Commission's case is not apt either. That Artic does not declare that all oil wherever found is the property of the Government. It is only the oil found under the land in the territorial waters and the continental shelf that is the property of the Government. This would be also clear if one looks at the Oil Fields (Regulation & Development) Act, 1948.

174. The decision in Tamlin v. Hannaford 1950 1 KB 18 is very much in point in deciding the questions that arise in the present case. That case was concerned with the question whether the British Transport Commission was a servant or an agent of the Crown. It was brought into existence by a special statute which had many of the qualities which belonged to corporations of other kinds. It had defined powers which it could not exceed. There were no shareholders to subscribe the capital. The money which the Corporation needed was raised by borrowing and was guaranteed by the Treasury. If it could not repay the loss fell on the Consolidated Fund of the United Kingdom. AH those who used the services which it provided and all whose supplies depended on it were concerned in seeing that it was properly run. The protection of the interests of the taxpayer, user and beneficiary was intrusted by Parliament to the Minister of Transport. He was given powers over this corporation which were as great as those possessed by a man who held all the shares in a private company, subject, however, to a duty to account to Parliament for his stewardship. It was the Minister who appointed the directors, the members of the Commission, and fixed their remuneration. They must give him any information he wanted. He was given power to give them directions of a general nature and they were bound to obey. The Court of Appeal said :

> These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not crown property.
>
> Further on they remarked :
>
> But the carriage of passengers and goods is a commercial concern which has never been the monopoly of anyone and we do not think that its unification under state control is any ground for conferring Crown privileges upon it.

> The only fact in this case which can be said to make the British Transport Commission a servant or agent of the Crown is the control over it which is exercised by the Minister of Transport; but there it ample authority both in this Court and in the House of Lords for saying that such control as he exercises is insufficient for the purpose.... In the absence of any such express provision, the proper inference, in the case, at any rate, of a commercial corporation, is that it acts on its own behalf, even through it is controlled by a government department.
>
> The case for considering any one of the three corporations under consideration as a public authority is much weaker than that either of the British Broadcasting Corporation or the British Transport Commisnon.

175. In Kruse v. Johnson 1898 2 QB 91 In regard to by-laws it was said :

> But first it seems necessary to consider what is a bylaw. A by-law, of the class we are here considering, I take to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the bye-law, they would be free to do or not do as they pleased. Further, it involves this consequence-that, if validly made, it has the force of law within the sphere of its legitimate operation.
>
> Contrast these with the effect of the regulations which we are considering. These regulations apply only to the employees of the corporation. They do not affect the public or any portion of the public, they do not order something to be done or not to be done accompanied by some sanction or penalty for its non-observance. Indeed it is this test that was applied in the Rajasthan Electricity Board's case .

176. In Halsbury's Laws of England (3rd ed., Vol. 9, p. 40) the law is set out thus :

> All regulations made by a corporation and intended to bind not only itself and its officers and servants, but members of the public who come within the sphere of their operation, may properly be called "bye-laws." whether they are valid or invalid in point of law; but the term may also be applied to regulations binding only on the corporation, its officers and servants.
>
> The distinction here is brought out between what we would call rules and regulations in our country.

177. Allen in his work 'Law and Orders' (3rd ed., p. 324) refers to the question raised in Tamlin v. Hannaford (supra). After noting that It was undoubtedly a public authority with large powers, and a considerable measure of control was exercised over it, under the Transport Act. 1947. by the

Minister of Transport; but in its activities, its liabilities, the status of its employees, and its subordination to statute, it was essentially a separate corporate body, in no way comparable to a Government department, goes on to observe :

> It is interesting to note that had the decision been otherwise everyone of the half-million (approximately) employees of the railways alone would have become a "servant or agent" of the Crown, entitled to the privileges of that status.
>
> That unfortunately would be the effect of what my learned brothers have chosen to do in their judgment.

178. It is now time to refer to the decisions of this Court relevant to the subject.

179. In the State Trading Corporation of India Ltd. and Ors. v. The Commercial Tax Officer, Visakhapatnam and Ors. Justice Shah pointed out that :

> The question whether a corporation is an agent or servant of the State must be decided on the facts of each case. In the absence of any statutory provision, a commercial corporation acting on its behalf, even if it is controlled wholly or partially by a Government department, will be presumed not to be a servant or an agent of the State. Where, however, the corporation is performing in substance governmental and not commercial, functions, an inference will readily be made that it is an agent of the Government.
>
> The case in Tamlin v. Hannaford was relied upon for this proposition.

180. In Life insurance Corporation of India v. Sunil Kumar Mukherjee and Ors. the order under consideration was one issued by the Central Government under Section 11(2) of the Act in exercise of its powers under that section. By that section it was the Central Government that was given the power to alter (whether by way of reduction or otherwise) the remuneration and other terms and conditions of service to such an extent and in such manner as it thought fit. That power so conferred was to be exercised notwithstanding any thing contained in Sub-section (1), or in the Industrial Disputes Act, 1947, or in any other law for the time being in force, or in any award, settlement or agreement for the time being in force. The order therefore had statutory effect and the order of termination of services of the employee was therefore in contravention of the statutory provision. That decision cannot therefore support any argument that regulations made under a statute have statutory effect.

181. In Andhra Pradesh State Road Transport Corporation v. The Income Tax Officer and Anr. a Constitution Bench of this Court held that State Road Transport Corporation is not the State. In that judgment the decision in Tamlin v. Hannaford was also referred to and after an exhaustive analysis of the various sections of the Act it was pointed out that:

> ...all the relevant provisions emphatically bring out the separate personality of the corporation and proceed on the basis that the trading activity is run by the corporation and the profit and loss that would be made as a result of the trading activity would be the profit and loss of the corporation. There is no provision in the Act which has attempted to lift the veil from the face of the corporation and thereby enable the shareholders to claim that despite the form which the organisation has taken, it is the shareholders who run the trade and who can claim the income coming from it as their own.

182. The decision in K. S. Ramamurthi Reddiar v. The Chief Commissioner, Pondicherry is not helpful in deciding what an authority is because the appellate in that case was ' quasi-judicial authority.

183. In Kasturilal v. State 1966 (1) SCR 375 a Constitution Bench of this Court after an exhaustive reference to all the earlier decisions pointed out:

> It is not difficult to realise the significance and importance of making such a distinction particularly at the present time when, in the pursuit of their welfare ideal, the Governments of the States as well as the Government of India naturally and legitimately enter into many commercial and other undertakings and activities which have no relation with the traditional concept of governmental activities in which the exercise of sovereign power is involved. It is necessary to limit the area of these affairs of the State in relation to the exercise of sovereign power, so that if acts arc committed by Government employees in relation to other activities which may be conveniently described as nongovernmental or non-sovereign, citizens who have a cause of action for damages should not be precluded from making their claim against the State. That is the basis on which the area of the State immunity against such claims must be limited.
>
> It would, therefore, be wrong to consider the words "other authorities" in Article 12 as including any corporation which docs not exercise part of the governmental functions of the State.

184. The Rajasthan State Electricity Board v. Mohan Lal is a very important decision. After noting the meaning of the word "authority" given in Webster's Third New International Dictionary the majority went on to point out that the dictionary meaning of the word "authority" was wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The first point to be noted is that none of the functions with which the three corporations under consideration are concerned, arc governmental or quasi-governmental functions. The work done by the Oil & Natural Gas Commission always used to be done by the various oil companies like Barmah Shell, Standard Vacuum etc. The work done by the Life Insurance Corporation was done by various insurance companies and the Industrial Finance Corporation is merely carrying out functions which any bank can carry on. When the majority further went on to observe :

> The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India.
>
> It can only be with regard to authority exercising governmental or quasi-governmental functions. The clue to the decision is given really in the following passage :
>
> The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Article 12. On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence.... The Board was clearly an authority to which the provisions of Part III of the Constitution were applicable.

185. This makes it clear that the fact that the Board carried on 'activities in the nature of trade or commerce could be a ground for excluding it from the scope of word "State" but for the fact that it was given powers to give directions the disobedience of which was punishable as a criminal offence.

186. We need not now pause to consider whether where a body carries out functions both with regard to trade and commerce and also exercises powers, which only a State can exercise like giving directions the disobedience of which is punishable as a criminal offence, the obligations and restrictions which are imposed by the Constitution on the exercise of those powers by the State should not be confined to those powers and with regard to the carrying on the trade and commerce it should not be treated as any other ordinary commercial concern.

187. Justice Shah's concurring judgment bring out in sharp focus the ratio of the decision by the majority. He said :

> The Board is an authority invested by statute with certain sovereign powers of the State...and to issue directions under certain provisions of the Act and to enforce compliance with those directions. The Board is also invested by statute with extensive powers of control over electricity undertakings. The power to make rules and regulations and to administer the Act is in substance the sovereign power of the State delegated to the Board. The Board is, in my judgment, "other authority" within the meaning of Article 12 of the Constitution.
>
> The expression "authority in its etymological sense means a body invested with power to command or give an ultimate decision, or enforce obedience, or having a legal right to command and be obeyed...." In considering whether a statutory or Constitutional body is an authority, within the meaning of Article 12, it would be necessary to bear in mind not only whether against the authority, fundamental rights

in terms absolute are intended to be enforced, but also whether it was intended by the Constitution-makers that the authority was invested with the sovereign power to impose restrictions on very important and basic fundamental freedoms.

In my judgment, authorities Constitutional or statutory invested with power by law but not sharing the sovereign power do not fall within the expression "State" as defined in Article 12. Those authorities which are invested with sovereign power, i.e. , power to make rules or regulations and to administer or enforce them to the detriment of citizens and others fall within the definition of "State" in Article 12, and Constitutional or statutory bodies which do not share that sovereign power of the State are not, in my judgment, "State" within the meaning of Art, 12 of the Constitution.

This is not in any way contrary to what majority decided but only explains and brings out in bold relief what has been laid down by the majority.

188. In Co-op. Bank v. Indust. Tribunal it was held :

The principle that rules framed under a statute have the force of statute docs not apply to bye-laws of a cooperative society. They merely govern the internal management, business or administration of a society and may be binding between the persons effected by them but are neither law nor do they have the force of law. They are just like conditions of service laid down by contract between the parties, or like bye-laws under the Articles of Association of a company under the Companies Act, or Standing Orders certified under the Industrial Employment (Standing Orders) Act. 1946. Therefore, the circumstances that in granting relief, the Tribunal may have to vary the special bye-laws framed by the Cooperative Banks does not lead to the inference that the Tribunal would be making orders contrary to law and therefore is incompetent to grant the reliefs claimed. The Jurisdiction granted to the Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering existing laws and enforcing existing contracts. The Tribunal has the jurisdiction even to vary contracts of service between employer and employees. Further in the Andhra Act there is no prohibition that the conditions of service prescribed are not to be altered. Therefore the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the Registrar's powers under the Cooperative Societies Act.

The main contention on behalf of the three organisations put forward by the learned Addl. Solicitor General was that if we hold that these corporations are State and the regulations as having the force of law there would be no room for any reference to the Industrial Tribunal under the Industrial Disputes Act, and that would be a great disadvantage from which the labour would suffer.

In Warehousing Corp. v. Tyagi it was held :

> A declaration to enforce a contract of personal service will not normally be granted. The exceptions are : (i) appropriate cases of public servants who have been dismissed from service in contravention of Article 311; (ii) dismissed workers under industrial and labour law; and (iii) when a statutory body has acted in breach of a mandatory obligation imposed by a statute.
>
> On the facts of this case it was held that a breach had been committed by the appellant of regulation 16(3), but such an order made in breach of the regulations would only be contrary to the terms and conditions of relationship between the appellant and the respondent and it would not be in breach of any statutory obligation because the Act does not guarantee any statutory status to the respondent, nor does it impose any obligation on the appellant in such matters. Therefore, the violation of the regulation could not have the effect of treating the employee as still in service or entitling him to reinstatement. This case was rightly relied up0A by the learned Addl. Solicitor General as supporting his point.

189. The decision in I.A.C. v. Sukhdeo Rai 1971 (Supp) SCR 510 had to consider the case of the Indian Airlines which is one of the parties in the cases before us. This Court referred to its earlier decisions in Tewari's case () and Rajasthan State Electricity Board case (supra) and distinguished the case in Life Insurance Corporation of India v. Mukherjee (supra). It also explained Naraindas Barot's case (). It then held that :

> Though made under the power conferred by statute, the regulations merely embody the terms and conditions of service in the Corporation but do not constitute a statutory restriction as to the kind of contracts which the Corporation can make with its servants or the grounds on which it can terminate them. That being so, and the Corporation having undoubtedly power to dismiss its employees, the dismissal of the respondent was with jurisdiction and although it was wrongful in the sense of its being in breach of the terms and conditions which governed the relationship between the Corporation and the respondent, it did subsist.
>
> The present case, therefore, did not fall under any of the three well-recognised exceptions laid down by this Court; hence the respondent was only entitled to damages and not to the declaration that his dismissal was null and void.

190. My learned brothers have referred to Naraindas Barot's case () and state that as it was decided by the Constitution Bench, the U.P. Warehousing Corporation's case [] and the Indian Airlines' case are in direct conflict with former decision in Naraindas Barot's case. The question whether the Road Transport Corporation was a State within the meaning of that term under Article 12 of the Constitution was neither raised nor decided there. Nor was the question whether the regulations under consideration in that case were of a statutory character raised or decided. That case is not an authority for the proposition that the Road Transport Corporation was a State or that its regulations had the effect of law. The discussion in this case would therefore have to proceed on the basis that it lays down no ratio and the U. P. Warehousing Corporation and the Indian Airlines cases are still

good law. The Sirsi Municipality case () and Tewari's case () stand, however, on a different footing. They are both concerned with bodies which were undoubtedly local bodies and therefore a State and they could provide no support for the view which my learned brothers have taken.

191. It only remains to deal with the two points made by the learned Addl. Solicitor General for the Corporations. One was that if the regulations are held to be law the remedy under the Industrial Disputes Act would not be available to the employees of these Corporations because under the Industrial Disputes Act the Tribunals have the right to form a new contract for the parties if the employment is a matter of contract but it cannot do so if it is a matter of statute and the decision that the regulations are law would have the result of causing detriment to the interest of the employees. I do not think that that consideration need deter us from holding that the regulations are law if it could be so held on other grounds.

192. Another argument of his was that these employments are a matter of personal service and therefore the test whether the contract could be specifically enforced should be taken into consideration in deciding whether a declaration that a dismissal of an employee in any case is void and he should be reinstated. I do not think that in the modern commercial and industrial world the idea of personal service has much relevance. It might have had its place in the context of 19th Century. There is no question of personal service in a large commercial or industrial organisation and this consideration need not therefore stand in the way of our accepting the employees' contention if it is otherwise acceptable.

193. The various provisions contained in respect of the various organisations like the State Road Transport Corporation or the British Transport Commission in Tarlin v. Hannaford would show that the power of control or even the financial interest of the State in these Corporations was as high as, if not higher than, that of the State in these corporations under consideration. So none of the considerations mentioned by my learned brothers would help them to reach the conclusion that these corporations are the State. The power of the owner in hire-purchase agreement and the power of the mortgages under Section 69 of the Transfer of Property Act to sell the mortgaged property by exercising his right of private sale can be usefully compared in connection with the powers conferred on the Industrial Finance Corporation Nor do I think that Section 25 of the Oil & Natural Gas Commission Act, 1959 would make it a State. The test laid down for deciding what is a State in the Rajasthan Electricity Board case, that is of commanding other people to do or not to do a thing on pain of punishment, is not there. I do not see how, as long as that decision holds the field, it is open to this Bench to take a different view. All the other decisions of this Court have followed only that view. The decision of my learned brothers is unsupportable in principle against the weight of authority and fraught with serious consequences. Suddenly overnight by the fiat of this Court all these bodies which till yesterday were not considered to be a State or other authority would be considered to be other authority and their employees entitled to provisions of Part III of the Constitution. We would be opening a veritable Pandora's box. The protection given to Government servants in India have no parallels anywhere in the world. They were getting on well enough till the Government of India Act, 1935. Till then there was no statutory protection given to them [See Venkata Rao's case (supra) and Rangachari's case (supra)]. It is a well known fact that it was the lack of confidence of the British Government in the capacity of the Indians to manage their own affairs

that led to Section 240 becoming part of the Government of India Act, 1935. This section is a forerunner of the present Article 311 of the Constitution. It is to be wondered why the framers of the Constitution should have copied the provisions of the Government of India Act 1935 with regard to Government servants. Be that as it may, there at least we have got the saving grace of Article 310. One's experience in the various High Courts as well as in this Court would have made it amply clear that not merely Article 311 but Articles 14 and 16 are resorted to by various Government servants to take up matters till the Court of the last resort even in petty matters like seniority, scale of pay and even minor punishments. Many a time have the learned Judges of this Court felt unhappy about the time of the Court being taken for days together by petty matters relating to Government servants and wished that there were a separate Court for dealing with these matters. By deciding that organisations like the ones under consideration in these cases are 'other authority' and the regulations they make is law we would at once at one stroke be creating a large mass of neo-Government servants and Articles 14 and 16 would provide amply opportunities for endless litigation. One would readily agree that labour whether employed by private industry or industry run by the Government should be treated equally. But that one class of labour, that is labour employed in industry run by the Government, should be more equal than others is a proposition which no reasonable minded person can agree to. The employees of the public sector industries would get even more advantages than even the Government servants to whom Articles 309, 310 and 311 apply. In the name of industrial action life will be paralysed. They are not subject to same rules and regulations or discipline to which the Government servants are subject. They would be different from the days when they were treated like employees of private firms and were subject to the ordinary law of master and servant and become entitled to be treated even better than the Government employees. One has only to refer to one's experience of what has happened to the Life Insurance Corporation or the various nationalised banks since they were nationalised. Misplaced sympathy is sometimes responsible for our attitude to labour. These days labour is not the weak and helpless force that it Was in the 19th Century. They are strong, well organised, rich and powerful. In England the Trade Union Congress is able to dictate to successive Governments on all sorts of matters. In America it is said that industrial managers have to wait hat-in-hand before the officers of the trade union bosses. George Meany of the A.F.L. and C.I.O. is able to dictate to the Government. One has only to refer to Jimmy Holla of the Teamsters' Union in America to know how powerful trade unions are. To the legitimate armoury of labour like strike and picketing and industrial negotiations this country has dubious distinction of having added 'gherao', a most uncivilised form of wrongful confinement in order to force concessions from managements and even heads of institutions, even educational institutions. There is no question there of any negotiations. The management or the head of the institution has to either surrender or be prevented from eating or even answering calls of nature and to be kept incommunicado with the outside world. These are not dire forebodings of what will happen but merely an enumeration of what is actually happening. With the trade unions coming up to this Court even in matters of minor punishment of a single workman and sometimes even against interim orders of industrial tribunals it would be litigants paradise.

194. I have read the judgment of my learned brother Mathew, J. with great interest and respect for the vast amount of learning and philosophical consideration that he has bestowed on the subject. It is obvious therefrom, however, that he realises that the earlier decisions of this Court do not support the view taken by him or my other learned brethren. What he says about labour and the public

service corporations, at best establish that they should be subject to control. But it does not establish that public service corporations owned by the Government should be treated differently from other public service corporations. That is why I said it is reasonable that labour in both cases should be treated alike. It does not establish that labour in public service corporations owned by Government should be treated like Government servants engaged in" administering or enforcing functions and duties connected with governmental functions.

195. I would hold that Oil & Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation are not authorities within the meaning of Article 12 of the Constitution and regulations framed by them have no force of law. The employees of these statutory bodies have no statutory status and they are not entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions.

196. By order of the Court.

197. Rules and Regulations of the Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation have the force of law.

198. The employees of these statutory bodies have a statutory status and they are entitled to a declaration of being in employment when their dismissal or removal is in contravention of statutory provisions.

199. These statutory bodies are authorities within the meaning of Article 12 of the Constitution.

200. In Civil Appeal No. 2137 of 1972, the declaration granted by the High Court that the order removing Bhagatram Sardarsingh Raghuvansi from service is null and void and that he continues in service is upheld. The writ of mandamus issued by the High Court is also upheld.

201. In Civil Appeal No. 1655 of 1973, the writ of mandamus granted by the High Court is upheld.

202. In Civil Appeal No. 1655 of 1973, the writ of mandamus granted Corporation is an authority within the meaning of Article 12 of the Constitution for the reasons given in this judgment. The conclusion of the High Court that the regulations have not the force of law is set aside. The conclusion of the High Court that Corporation should not be permitted to enforce the regulations mentioned in Clauses (1) and (4) of Regulation 25 is upheld.

203. In Civil Appeal No. 115 of 1974, the Judgment of the High Court is set aside. The Finance Corporation is an authority within the meaning of Article 12. The Regulations of the Corporation have the force of law. The conclusion of the High Court that the Association is not entitled to raise a plea of discrimination on the basis of Article 16 is set aside.

204. The appeals are disposed of accordingly.

205. The parties will pay and bear their own costs in all these appeals.