

KARNATAKA STATE POLLUTION CONTROL BOARD A

v.

B. HEERA NAIK & ORS. ETC.

(Criminal Appeal Nos. 1734-1736 of 2019)

NOVEMBER 26, 2019 B

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

Water (Prevention and Control of Pollution) Act, 1974: s.10
– *Whether City Municipal Council is Department of Government*
– *Held: The City Municipal Council is a Council, incorporated* C
under s.10 of the Karnataka Municipalities Act, 1964 – City and
Town Municipal Councils as per s.10 is “a body corporate” –
Similarly, under the Karnataka Municipal Corporations Act, 1976,
the Municipal Corporations are constituted as Corporation by
virtue of s.10 – The Municipal City Council and Municipal D
Corporation, which have been created by State enactments are
controlled by the Government, which bodies also receive financial
assistance from the Government – It is well settled that Municipal
Corporations are instrumentality or agency of the Government –
The question is whether City Municipal Council constituted under
the Municipalities Act can be treated as Department of Government E
– *The first test to find out as to whether an institution is a*
Corporation or a Department of the Government is to enquire
whether the undertaking functions as a responsible independent
organisation and not as part of any Department of the State; the
second test is whether it is endowed with the capacity to contract
obligations and of suing and being sued – The Scheme of F
constitution of Municipal area and other provisions of Act, 1964
clearly indicate that Municipalities are not a Department of the
Government – The Constitution also envisages Municipality as a
body of self-Government – Thus, the provisions of the Act, 1964
and Act, 1974 makes it clear that City Municipal Council are not G
to be treated as Department of the State Government – Karnataka
Municipalities Act, 1964 – Karnataka Municipal Corporations Act,
1976 – Municipalities – Constitution of India – Art.243P.

Water (Prevention and Control of Pollution) Act, 1974: s.47,
48 – Prosecution of Municipal Commissioner of City Municipal H

- A *Council and Chief Officer of City Municipal Council – When an offence is committed by City Municipal Council or Corporation, whether they can be prosecuted under the Act, 1974 and what is the procedure for initiating proceeding for prosecution of such bodies – Held: s.47 contains a heading “offences by companies”*
- B *– The definition of company is contained in the Companies Act, 1956 in s.3 – The definition of company as contained in the Companies Act, 1956 is clearly not borrowed in the expression of company as used in s.47 of Act, 1974 – The company has been defined in s.47 of Act, 1974 in a very wide and inclusive manner – Explanation to s.47 states that “company” means “any body corporate” – Thus, all body corporates are included within the definition of company as per s.47 – There cannot be any dispute that City Municipal Council is a body corporate, which has been clearly provided under s.10 of Act, 1964 – Looking at the purpose and object of the Act, s.47 can be resorted to for offences by body corporate – s.49 embraces cognizance of all offences under the Act – Whether the offences are covered by ss.47 or 48 has no bearing on the power of the Court to take cognizance of an offence – Karnataka State Pollution Control Board filed complaint for taking cognizance specifically referring to s.49 of the Act, 1974 – Thus, in event any offence is committed by anyone, its cognizance can be taken under s.49 – However, offences by a body corporate are to be covered by s.47, since in event offences by body corporates are not covered by s.47, the benefit of s.47(1) proviso shall not be available to those body corporates, which cannot be the intention of the Legislature – Thus, offences by body corporate like City Municipal Council are covered under s.49 treating it to be offence as by company as provided in s.47 – Complaint against Municipal Commissioner of City Municipal Council and Chief Officer of City Municipal Council by appellant-Board was maintainable – Companies Act, 1956 – s.3.*
- G *Water (Prevention and Control of Pollution) Act, 1974: Legislative intent of enactment – The Act, 1974 was enacted by the Parliament to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water.*
- H *Municipalities: Duties of Municipal Council/Corporation – Held: City Municipal Council and City Municipal Corporation are*

created or incorporated by the State and entrusted with the Municipal functions – One of the main functions entrusted to the Corporation is to ensure clean environment to the residents, to control pollution in a Municipal area, which is one of the duties of the Municipal Council and the Corporation. A

Allowing the appeals, the Court B

HELD: 1.1 The Act, 1974 was enacted by the Parliament to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. [Para 7] [313-H; 314-A-B] C

1.2 Section 48 of the Act, 1974 is attracted where the offence is committed by any Department of Government. The provisions of Act, 1974 as well as the Karnataka Municipalities Act, 1964 have to be looked into to find out as to whether Commissioner of City Municipal Council or Chief Officer of City Municipal Council constituted under the Karnataka Municipalities Act, 1964 can be treated to be the Head of the Department of any Department of Government. The City Municipal Council is a Council, incorporated under Section 10 of the Karnataka Municipalities Act, 1964. City and Town Municipal Councils as per Section 10 is “a body corporate”. Similarly, under the Karnataka Municipal Corporations Act, 1976, the Municipal Corporations are constituted as Corporation by virtue of Section 10. The concept of creating body corporate and corporation to carry out the functions of the Government is a modern concept of the Government. The modern Governments have undertaken on themselves large functions touching the life of its citizens, inhabitants. The Scheme underlying the Constitution of India entrust and oblige the Governments to carry out different functions for achieving the constitutional objectives to secure justice, liberty equality and fraternity. [Paras 11, 12, 13] [316-E-G; 317-C-E] D
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1.3 The Municipal City Council and Municipal Corporation, which have been created by State enactments are controlled by H

A the Government, which bodies also receive financial assistance
from the Government. It is well settled that Municipal
Corporations are instrumentality or agency of the Government.
The question is whether City Municipal Council constituted
under the Municipalities Act can be treated as Department of
B Government. Under Act, 1974, the State Government has been
defined in Section 2(i). In constitution of the State Boards, the
State Government nominates members of the local authorities
functioning within the State, members to represent the
companies or corporations owned, controlled or managed by the
C State Government as well as officials to represent that
Government. [Para 14] [318-B-D]

2.1 The Scheme of the Act indicate that there are separate
members to represent the Government in the Board, separate
members to represent the local authorities functioning in the
D State and separate members to represent the companies or
corporations owned, controlled or managed by the State
Government. The Government, local authorities and companies
or corporations owned, controlled or managed by the State
Government are all different expressions used in the Act.
Whether an institution is a corporation or a Department of the
E Government has to be found out from the Scheme under which
it has been created. One of the tests to find out as to whether
an institution is a Corporation or a Department of the
Government is to enquire whether the undertaking functions as
a responsible independent organisation and not as part of any
F Department of the State. Second test would be to see whether it
is endowed with the capacity to contract obligations and of suing
and being sued. Further, the power to possess, use and change
a seal is incidental to a corporation and a corporation aggregate
can, as a general rule, only act or express its will by deed under
its common seal. The Karnataka Municipalities Act, 1964
G provides for a Town and City Municipal Councils as a body
corporate. The control of the State Government on the
Municipality is provided in a separate chapter, i.e., Chapter XII.
The Scheme of constitution of Municipal area and other
provisions of Act, 1964 clearly indicate that Municipalities are
not a Department of the Government. [Para 15] [319-G-H; 320-
H A-D]

2.2 Article 243P sub-clause (e) defines “Municipality” as an institution of self- Government constituted under Article 243Q. The Constitution also envisages Municipality as a body of self-Government. The provisions of the Act, 1964 and Act, 1974 makes it clear that City Municipal Council cannot be treated as Department of the State Government. After having found that City Municipal Council is not Department of the Government – the question is whether they are immuned from prosecution under Act, 1974. City Municipal Council and City Municipal Corporation are created or incorporated by the State and entrusted with the Municipal functions. One of the main functions entrusted to the Corporation is to ensure clean environment to the residents, to control pollution in a Municipal area, which is one of the duties of the Municipal Council and the Corporation. [Paras 16, 18] [320-E-F; 321-A]

When an offence is committed by City Municipal Council or Corporation, whether they can be prosecuted under the Act, 1974 and what is the procedure for initiating proceeding for prosecution of such `bodies?

3.1 Section 47 contains a heading “offences by companies”. Section 47(1) is similar to Section 48. The definition of company is contained in the Companies Act, 1956 in Section 3. The definition of company as contained in the Companies Act, 1956 is clearly not borrowed in the expression of company as used in Section 47 of Act, 1974. The company has been defined in Section 47 of Act, 1974 in a very wide and inclusive manner. Explanation states that “company” means “any body corporate”. Thus, all body corporates are included within the definition of company as per Section 47. There cannot be any dispute that City Municipal Council is a body corporate, which has been clearly provided under Section 10 of Act, 1964. [Paras 19, 20] [321-C-E-G]

3.2 Section 47 can be resorted to for offences by body corporate and Karnataka State Pollution Control Board by filing a complaint before the Magistrate for taking cognizance of offence under Section 49 did not commit an error. Section 49 embraces cognizance of all offences under the Act. Whether the offences are covered by Section 47 or 48 has no bearing on the

- A power of the Court to take cognizance of an offence. Karnataka State Pollution Control Board has filed complaint for taking cognizance specifically referring to Section 49 of the Act, 1974. Thus, in event any offence is committed by anyone, its cognizance can be taken under Section 49. However, offences by a body corporate are to be covered by Section 47, since in event offences by body corporates are not covered by Section 47, the benefit of Section 47(1) proviso shall not be available to those body corporates, which cannot be the intention of the Legislature. Thus, offences by body corporate like City Municipal Council are covered under Section 49 treating it to be offence as by company as provided in Section 47. [Paras 29, 31] [328-G-H; 329-G-H; 330-A]
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V.C. Chinnappa Goudar v. Karnataka State Pollution Control Board & Anr. [2015] 3 SCR 652 ; *Shri D.H. Raya v. Karnataka State Pollution Control Board* Criminal Petition No.831 of 2007 – distinguished.

- D *Hakam Singh v. M/s. Gammon (India) Ltd.,* (1971) 1 SCC 286 : [1971] 3 SCR 314 - relied on.

- E *Ramana Dayaram Shetty v. International Airport Authority of India and Others,* (1979) 3 SCC 489 : [1979] 3 SCR 1014 ; *Subhash Chandra v. Gulab Bai and Others,* (2016) 4 SCC 750 ; *Ranjit Narayan Haksar v. Surendra Verma,* 1995 MPLJ 21 ; *Aneeta Hada v. Godfather Travels and Tours Private Limited,* (2012) 5 SCC 661 : [2012] 5 SCR 503 ; *Arun Kumar Singh v. The State of Bihar and Ors.* [2006] 2 SCR 1058 – referred to.
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Case Law Reference

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| | [2015] 3 SCR 652 | distinguished | Para 6 |
| | [1979] 3 SCR 1014 | referred to | Para 13 |
| G | [1971] 3 SCR 314 | relied on | Para 21 |
| | (2016) 4 SCC 750 | referred to | Para 23 |
| | 1995 MPLJ 21 | referred to | Para 23 |
| | [2012] 5 SCR 503 | referred to | Para 27 |
| H | [2006] 2 SCR 1058 | referred to | Para 28 |

KARNATAKA STATE POLLUTION CONTROL BOARD v. 311
B. HEERA NAIK & ORS. ETC.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
Nos. 1734-1736 of 2019.

From the Judgment and Order dated 16.02.2015 of the High Court of Karnataka at Bengaluru in Criminal Petition No. 2627 of 2012 C/W Criminal Petition Nos. 1537 and 1010 of 2011.

S. J. Amith, Purushottam Sharma Tripathi, Mukesh Kumar Singh, B
R. C. Prakash, Advs. for the Appellant.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. These appeals raise an important question as to whether C
Commissioner of City Municipal Council and Chief Officers of City Municipal Council can be prosecuted under Section 48 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as “Act, 1974”). By these appeals, the Karnataka State Pollution Control Board has challenged the judgment of High Court of Karnataka D
dated 16.02.2015 by which applications under Section 482 Cr.P.C. filed by the respondents, who were working as Municipal Commissioner and Chief Officers of Municipal Council, were allowed and the proceeding initiated for their prosecution by appellant under the Act, 1974 has been quashed.

2. The High Court vide impugned judgment dated 16.02.2015 has E
allowed three separate applications under Section 482 Cr.P.C. being Criminal Petition Nos.2627 of 2012, 1537 of 2011 and 1010 of 2011. All the three applications were filed on the basis of similar facts. It is sufficient to refer to the facts in Criminal Petition No.2627 of 2012 filed in the High Court, for deciding these appeals. F

3. The brief facts necessary to be noticed for deciding these appeals are:-

3.1 The appellant Karnataka State Pollution Control Board is a statutory body established under Section 4 of the Act, 1974. The Board is a body corporate having perpetuate succession and common seal. G
The Act, 1974 provides for special procedure for taking cognizance of the offence punishable under the Act, 1974.

3.2 First respondent to the appeal is Shri B. Heera Naik, who was working as the Commissioner, City Municipal Council, Krishnarajapuram, Bangalore. The second respondent M.A. Baig and H

- A the third respondent D.L. Narayan were also Ex-Commissioner of City Municipal Council, Krishnarajapuram, Bangalore.

3.3 The Karnataka State Pollution Control Board filed a complaint being C.C. No.1101 of 2006 in the Court of Metropolitan Magistrate at Bangalore praying for taking cognizance of the offence punishable under Sections 43 and 44 of the Act, 1974 against the accused persons and to punish them for the offences. In the complaint, the City Municipal Council, Krishnarajapuram, Bangalore was impleaded as accused No.1 and respondent No.2 was the Commissioner of the City Municipal Council and respondent Nos. 3 to 7 were all Ex-Commissioners, who had held the office of Commissioner from different periods from 03.11.2004 till the date of filing of complaint. The complaint stated that Board had accorded a consent to the accused persons to discharge sewage effluent after treatment which was expired on 30.06.2006 and thereafter the same has not been renewed. One of the conditions of the said consent was that the accused persons should provide Sewage Treatment Plant within six months to treat sewage generated in the City Municipal Council Area which has not been done so far, nor any steps have been taken in that regard, and on the other hand, the accused persons have continuously discharging the untreated sewage into the water bodies like ponds, lakes, natural valleys. The Complaint stated that non-obtaining of the consent after 30.06.2006, non-providing of Sewage Treatment Plant, Under Ground Drainage facility and discharging the untreated sewage into the neighbouring water bodies constitute the violation of Section 25 of the Act, 1974, which is punishable under Section 44 of the Act, 1974.

- F 3.4 Similar complaints were filed by Karnataka State Pollution Control Board with regard to the Town Municipal Council, Kengeri, Bangalore and the Chief Officer of the Town Municipal Council as well as complaint against City Municipal Council, Rajarajeshwari Nagar, Mysore Road and its Commissioner.

- G 3.5 The respondents to these appeals filed criminal petitions under Section 482 Cr.P.C. praying to quash the entire proceeding initiated by appellant for prosecution of the respondents under the Act, 1974.

- H 3.6 The learned Single Judge of the High Court vide its judgment dated 16.02.2015 allowed all the three applications filed under Section 482 Cr.P.C. quashing the proceedings initiated by the appellant following an earlier judgment of Karnataka High Court dated 18.01.2012 in

Criminal Petition No. 831 of 2007, which in turn had relied on a Division Bench judgment of the Karnataka High Court in Writ Petition No. 30610 of 2008. The Division Bench had held that Commissioner of Municipal Council, Chief Officer or Council cannot be termed as Head of the Department and they cannot be prosecuted under Section 48 of the Act, 1974. Aggrieved against the judgment of the High Court, these appeals have been filed.

4. We have heard the learned counsel for the appellant. None appeared for the respondents, though served.

5. Learned counsel for the appellant contends that the Corporation constituted under the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as “Act, 1976”) and Municipalities constituted under the Karnataka Municipalities Act, 1964 (hereinafter referred to as “Act, 1964”) are entrusted with large number of municipal functions and statutory duties. The provisions of the Act, 1974 provide for penalties and procedure also and whosoever contravenes any of the provisions of the Act, 1974, is liable to be prosecuted. The Municipal Corporation and the Municipalities, who violate the provisions of Act, 1974 are also liable to be prosecuted with. The Commissioner of the Municipal Corporation, the Municipal Council and the Chief Officers of the Municipal Council are Chief Executive Officers of the respective Corporation and Council and they being Head of the Department, being of the Corporation or the Council, are liable to be prosecuted with under Section 74. The High Court committed error in quashing the prosecution launched against Commissioner and Chief Officer by taking an erroneous view that they are not liable to be prosecuted they being not Head of Department.

6. Learned counsel relies on a judgment of this Court in **Criminal Appeal No. 755 of 2010 – V.C. Chinnappa Goudar Vs. Karnataka State Pollution Control Board & Anr.** decided on 10.03.2015 by which the judgment of the High Court of Karnataka rejecting the applications of Commissioner and Chief Commissioner challenging their prosecution under the Act, 1974 was affirmed. He submits that High Court ought not to have quashed the proceeding in exercise of jurisdiction under Section 482 Cr.P.C. which judgment deserves to be set aside.

7. Before we proceed to consider submissions of the appellant, it is useful to refer to certain provisions of the Act, 1974. The Act, 1974 was enacted by the Parliament to provide for the prevention and

- A control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. In
- B Act, 1974, the Central Board and State Boards are constituted by notification in the Official Gazette. Powers and functions of the Board are provided in Chapter IV. Section 24 provides for prohibition on use of stream or well for disposal of polluting matter, etc. and Section 25 provides for restrictions on new outlets and new discharges. Section 26 contains provision regarding existing discharge of sewage or trade
- C effluent. Section 27 deals with refusal or withdrawal of consent by State Board. Chapter VII of the Act provides for penalties and procedure. Section 41 enumerate circumstances and acts on which any person can be prosecuted. Sections 43 to 46 deals with different penalties. Section 47 deals with offences by companies and Section 48 deals with offences by Government Departments, which are relevant,
- D are as follows:-

- E “**47. Offences by companies.**—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

- F Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- G (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
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Explanation.— For the purposes of this section- A

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

48. Offences by Government Departments.— Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: B

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. C

8. The High Court in the impugned judgment for coming to the conclusion that Commissioner of Municipal Council, Chief Officer or a Council cannot be termed as Head of the Department, has placed reliance on two earlier judgments of the High Court namely, (i) **Criminal Petition No. 831 of 2007** dated 18.01.2012 and (ii) a Division Bench judgment of the High Court dated 30.10.2008 in **Writ Petition (C) No.30610 of 2008 – Sri V.C. Chinnappa Goudar Vs. Karnataka State Pollution Control Board.** D E

9. We have gone through the judgment of the Division Bench of the Karnataka High Court in **V.C. Chinnappa Goudar (supra)**, which was a writ petition filed by a Commissioner of City Municipal Council challenging the proceeding initiated by Karnataka State Pollution Control Board, the challenge in the writ petition was to quash the proceedings on the ground that action initiated against the petitioner is without jurisdiction for want of previous sanction from the Government as per Section 197 Cr.P.C. The Division Bench after considering the provisions of Act, 1974 and Criminal Procedure Code came to conclusion that no previous sanction is required for initiating the legal action against such person by Board for offence contravening Section 48 of the Act, 1974 and the writ petition was accordingly dismissed. There was neither any discussion in the judgment that Commissioner of Municipal Council is not Head of the Department of any Department of Government nor F G H

- A there was any ratio to the above effect. Another judgment relied by High Court is the decision of the High Court in **Criminal Petition No.831 of 2007 - – Shri D.H. Raya Vs. Karnataka State Pollution Control Board**, which is also brought on the record as Annexure P-11. The said judgment was also a petition under Section 482 Cr.P.C. filed by Chief Officer of a Town Municipal Council praying for quashing the complaint filed by Karnataka State Pollution Control Board for offence under Section 25 of Act, 1974. The High Court relied on the earlier Division Bench judgment of this Court in **Criminal Appeal No. – 755 of 2010 - V.C. Chinnappa Goudar (supra)** and allowed the petition. There was neither any discussion in the judgment that Chief Officer is not the Head of the Department of any Department of Government nor there was any ratio to the above effect. Thus, the judgment of the High Court quashing the complaint was misplaced.

- D 10. We now need to consider as to whether Municipal Commissioner of City Municipal Council or Chief Officer of City Municipal Council are Head of the Department of any Department of Government, which was the supposed basis of the judgment of the High Court.

- E 11. Section 48 of the Act, 1974 provides that “Where an offence under the Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.....”. The heading of the section is “Offences by Government Departments”. Section 48, thus, is attracted where the offence is committed by any Department of Government. The question to be answered, thus, is as to whether Commissioner of City Municipal Council or Chief Officer of City Municipal Council constituted under the Karnataka Municipalities Act, 1964 can be treated to be the Head of the Department of any Department of Government. The provisions of Act, 1974 as well as the Karnataka Municipalities Act, 1964 have to be looked into to find answer to the above question. The City Municipal Council is a Council, incorporated under Section 10 of the Karnataka Municipalities Act, 1964, which is as follows:-

- H “10. Incorporation of city and town municipal councils.—
(1) In every municipal area, there shall be a municipal council, and every such municipal council shall be a body corporate by

the name of “the City Municipal Council of” or “the Town Municipal Council of”, as the case may be, and shall have perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract and may by the said name sue and be sued through its Chief Officer or Municipal Commissioner.

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(2) Save as otherwise provided in this Act, the municipal Government of a municipal area shall vest in the municipal council.”

12. City and Town Municipal Councils as per Section 10 as quoted above is “**a body corporate**”. Similarly, under the Karnataka Municipal Corporations Act, 1976, the Municipal Corporations are constituted as Corporation by virtue of Section 10.

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13. The concept of creating body corporate and corporation to carry out the functions of the Government is a modern concept of the Government. The modern Governments have undertaken on themselves large functions touching the life of its citizens, inhabitants. The Scheme underlying the Constitution of India entrust and oblige the Governments to carry out different functions for achieving the constitutional objectives to secure justice, liberty equality and fraternity. This Court in **Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, (1979) 3 SCC 489 : AIR 1979 SC 1628** has noted necessity to forge a new instrumentality or administrative device to keep up with governmental functions. Following was laid down by this Court:-

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“Now, it is obvious that the Government which represents the executive authority of the State, may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to

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A forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government.”

B 14. The Municipal City Council and Municipal Corporation, which have been created by State enactments are controlled by the Government, which bodies also receive financial assistance from the Government. It is well settled that Municipal Corporations are instrumentality or agency of the Government. The question to be answered as noted above is whether City Municipal Council constituted under the Municipalities Act can be treated as Department of Government. Under Act, 1974, the State Government has been defined in Section 2(i). In constitution of the State Boards, the State Government nominates members of the local authorities functioning within the State, members to represent the companies or corporations owned, controlled or managed by the State Government as well as officials to represent that Government. Section 4 of Act, 1974, which deals with the constitution of the State Boards is as follows:-

E **“4. Constitution of State Boards** (1) The State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board, under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) A State Board shall consist of the following members, namely,-

F (a) a Chairman, being, a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the State Government;

G Provided that the Chairman may be either whole-time or part-time as the State Government may think fit;

H (b) such number of officials, not exceeding five, to be nominated by the State Government to represent that government;

(c) such number of persons, not exceeding five, to be A
nominated by the State Government from amongst the
members of the local authorities functioning within the
State;

(d) such number of non-officials, not exceeding three, to be B
nominated by the State Government to represent the
interests of agriculture, fishery or industry or trade or
any other interest which, in the opinion of the State
Government, ought to be represented;

(e) two persons to represent the companies or corporations C
owned, controlled or managed by the State Government,
to be nominated by that government;

(f) a full-time member-secretary, possessing qualifications, D
knowledge and experience of scientific, engineering or
management aspects of pollution control, to be appointed
by the State Government.

(3) Every State Board shall be a body corporate with the name
specified by the State Government in the notification under sub-
section (1), having perpetual succession and a common seal with
power, subject to the provisions of this Act, to acquire hold and
dispose of property and to contract, and may, by the said name, E
sue or be sued.

(4) Notwithstanding anything contained in this section, no State
Board shall be constituted for a Union Territory and in relation
to a Union Territory, the Central Board shall exercise the powers
and perform the functions of a State Board for that Union F
Territory:

Provided that in relation to any Union Territory the Central Board
may delegate all or any of its powers and functions under this
sub-section to such person or body of persons as the Central
Government may specify.” G

15. The Scheme of the Act as delineated by above provision
indicate that there are separate members to represent the Government
in the Board, separate members to represent the local authorities
functioning in the State and separate members to represent the
companies or corporations owned, controlled or managed by the State H

- A Government. The Government, local authorities and companies or corporations owned, controlled or managed by the State Government are all different expressions used in the Act. Whether an institution is a corporation or a Department of the Government has to be found out from the Scheme under which it has been created. One of the tests to find out as to whether an institution is a Corporation or a Department
- B of the Government is to enquire whether the undertaking functions as a responsible independent organisation and not as part of any Department of the State. Second test would be to see whether it is endowed with the capacity to contract obligations and of suing and being sued. Further, the power to possess, use and change a seal is incidental
- C to a corporation and a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal. The Karnataka Municipalities Act, 1964 as noted above, provides for a Town and City Municipal Councils as a body corporate. The control of the State Government on the Municipality is provided in a separate chapter, i.e., Chapter XII. The Scheme of constitution of Municipal area and
- D other provisions of Act, 1964 clearly indicate that Municipalities are not a Department of the Government.

16. We may also notice the constitutional provisions of Part IXA, “the Municipalities” inserted by Constitution (Seventy Fourth) Amendment Act, 1992. Article 243P sub-clause (e) defines
- E “Municipality” as an institution of self-Government constituted under Article 243Q. The Constitution also envisages Municipality as a body of self-Government. The provisions of the Act, 1964 and Act, 1974 makes it clear that City Municipal Council cannot be treated as Department of the State Government. After having found that City
- F Municipal Council is not Department of the Government – whether they are immuned from prosecution under Act, 1974 is the next question to be answered.

17. Chapter VII of the Act, 1974 deals with penalties and procedure. Section 41, which provides for punishment and penalty
- G begins with phrase “whoever fails to comply.....”. Similarly, Section 42, which deals with penalty for certain acts also begins with the expression “whoever”. Similar expression is found in Sections 43, 44 and 45A, which begins with the word “whoever”. The Act, 1974, thus, envisages conviction of any person, who contravenes and violates
- H the provisions of the Act.

18. City Municipal Council and City Municipal Corporation are created or incorporated by the State and entrusted with the Municipal functions. One of the main functions entrusted to the Corporation is to ensure clean environment to the residents, to control pollution in a Municipal area, which is one of the duties of the Municipal Council and the Corporation.

19. When an offence is committed by City Municipal Council or Corporation, whether they can be prosecuted under the Act, 1974 and what is the procedure for initiating proceeding for prosecution of such bodies? Section 47 of the Act, 1974 in this context is relevant. Section 47 contains a heading “offences by companies”. Section 47(1) is similar to Section 48. Whether the expression “companies” as used in Section 47 can include other corporate bodies including City Municipal Council and Corporation? The answer is to be found in the Explanation to Section 47, which provides as follows:-

“Explanation.— For the purposes of this section-

- (a) “company” means any body corporate, and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm means a partner in the firm.”

20. In a Statute, the definition of an expression has to be found out in accordance with the context and Scheme of the enactment. The definition of company is contained in the Companies Act, 1956 in Section 3. The definition of company as contained in the Companies Act, 1956 is clearly not borrowed in the expression of company as used in Section 47 of Act, 1974. The company has been defined in Section 47 of Act, 1974 in a very wide and inclusive manner. Explanation states that “company” means “**any body corporate**”. Thus, all body corporates are included within the definition of company as per Section 47. There cannot be any dispute that City Municipal Council is a body corporate, which has been clearly provided under Section 10 of Act, 1964 as noted above.

21. In **Hakam Singh Vs. M/s. Gammon (India) Ltd., (1971) 1 SCC 286**, this Court while considering the Explanation II to Section 20 C.P.C. had held that use of word “Corporation” in Explanation II also includes the “company”. In paragraph 6, following has been laid down:-

- A “6. The argument of counsel for the appellant that the expression
“corporation” in Explanation II includes only a statutory
corporation and not a company registered under the Indian
Companies Act is, in our judgment, without substance. The Code
of Civil Procedure uses the expression “corporation” as meaning
B a legal person and includes a company registered under the Indian
Companies Act. Order 29 of the Code of Civil Procedure deals
with suits by or against a corporation and there is nothing in the
Code of Civil Procedure that a corporation referred to under
Order 20 means only a statutory corporation and not a company
registered under the Indian Companies Act.”

C From the above, it is clear that the meaning and definition of an
expression used in an enactment has to be determined from the
particular Statute. In C.P.C., Explanation to Section 20, only word
“corporation” was used, which was held to include a “company” also.

- D 22. The expression “company” has been used in different statutes
with different purpose and object. This Court as well as the High
Courts had occasion to consider the meaning of company in reference
to different Statutes. We may notice some of the cases of this Court
as well as of the High Court in the above reference.

- E 23. In **Subhash Chandra Vs. Gulab Bai and Others, (2016)**
4 SCC 750, the question as to whether within the meaning of Section
23-J(ii) of M.P. Accommodation Control Act, 1961, the expression
“company owned and controlled by the State Government” can held
to include a “corporation” came for consideration. This Court noted a
F Full Bench judgment of M.P. High Court wherein it was held that retired
employees of a Municipal Corporation will not be covered by Section
23-J, whereas the Division Bench of M.P. High Court in **Ranjit**
Narayan Haksar Vs. Surendra Verma, 1995 MPLJ 21 held that
M.P. State Road Transport Corporation was a company owned and
controlled by the State Government. Against the Division Bench
G judgment in **Ranjit Narayan’s** case, matter was taken in this Court by
special leave petition, which was dismissed and this Court while
dismissing the special leave petition agreed with the Division Bench
judgment that word “company” in Section 23-J would include
“corporation”. Paragraphs 2, 4 and 5 of the judgment is extracted
H below:-

“2. The short question that falls for determination in these appeals is whether a retired Municipal Corporation employee can also maintain an application for eviction under Chapter III-A of the Madhya Pradesh Accommodation Control Act, 1961 and, in particular, whether any such “retired employee” is an employee of a “company owned or controlled by the State Government” within the meaning of Section 23-J(ii) of the Act aforementioned. A Full Bench of the High Court of Madhya Pradesh at Indore has by a 2:1 decision (Gulab Bai V. Subhash Chandra, (2013) 3 MPLJ 434) answered the said question in the negative and declared that “retired employees” of municipal corporation will not be covered under Section 23-J(ii) of the Act to maintain an application for eviction under Chapter III-A thereof.

4. In *Ranjit Narayan case* a Division Bench of the High Court of Madhya Pradesh was examining whether Madhya Pradesh State Road Transport Corporation was a “company owned or controlled by the State Government” so as to entitle any employee who retired from its service to maintain an eviction petition under Chapter III-A of the Madhya Pradesh Accommodation Control Act, 1961. Answering the question in the affirmative, the High Court held that keeping in view the objects and reasons and the scheme of the Act, especially the scheme underlying Chapter III-A thereof, the expression “company owned or controlled by the State Government or the Central Government” must be understood to include even statutory corporations like Madhya Pradesh State Road Transport Corporation established under the State Road Corporation Act. The High Court while saying so, approved the ratio in *Vipin v. Ranajitnarayan*, 1986 MPRCJ Note 11, while overruling the decision in *Sobhagyamal v. Prakash Pharmaceuticals*, AIR 1990 MP 345.

5. In a special leave petition filed against the said judgment and order, this Court by a short order affirmed the reasoning and the view taken by the High Court. This Court observed:

“We agree with the view taken by the Division Bench that the word “company” in Section 23-J(ii) would include “corporation” created under the special statute which is owned or controlled by the Central or the State Government. Hence, the SLP is dismissed.”

A (*Surendra Verma v. Ranjeet Narayan Haksar*, 1995 *Jab LJ*
460 (SC))

24. This Court in the above case noticing conflicting pronouncements referred the matter to a Larger Bench. The Larger Bench judgment has been delivered on 22.01.2019 in **Civil Appeal No.1696 of 2016 – Subhash Chandra (D) Thr. LRs. Vs. Gulab Bai & Ors.** Two questions, which were referred before the Larger Bench has been noticed in paragraph 4 of the judgment, which is to the following effect:-

C “4. Calling into question the entitlement of the landlord to avail of the special procedure under Chapter IIIA of the Act on the ground that he is not a landlord within the meaning of the said expression as appearing in Section 23-J(ii) of the Act, a revision petition was filed before the High Court. The said revision led to a reference to a Full Bench of the High court. Two learned Judges of the High Court held that the appellant would not be a landlord within the meaning of Section 23-J(ii) of the Act. Aggrieved, the present appeal has been filed wherein two Judges Bench of this Court had referred the following questions for an authoritative pronouncement:

E (i) Whether the expansion of the word ‘company’ to statutory Corporations by the Madhya Pradesh High Court in *Ranjit Narayan Haksar vs. Surendra Verma*, 1995 MPLJ 21 has to be understood to be confined only to Corporations engaged in trading activities and statutory Corporations including Municipal Corporations would be outside the scope of the said expression “company” appearing in Section 23-J(ii) of the Act.

G (ii) If the answer to the above question is in the negative, whether the expression “company owned and controlled either by the Central or State Government” appearing in Section 23-J(ii) of the Act would require an expansive and liberal interpretation to save the said provision from being declared to be unconstitutional on the touch-stone of Article 14 of the Constitution of India.”

H 25. This Court after considering the object and purpose of M.P. Accommodation Control Act, 1961, specially the object of Section 23-

J(ii) held that although Section 23-J(ii) only used the word “company”, A
the said expression shall also include Municipal Corporations and the
employees of the Municipal Corporations cannot be denied the benefit
of such beneficial provision. In paragraphs 5, 6 and 7 following has
been laid down:-

“5. We have noticed the special procedure and the special forum B
available for the categories of landlords specified in Section 23-
J of the Act. They include: retired Government servants; retired
servant of a company owned or controlled either by the Central
or State Government; a widow or a divorced wife; physically
handicapped person; a retired member of the defence service. C
The object of creating a special procedure and special forum by
incorporating Chapter IIIA in the Act is to provide a more
efficacious and speedy remedy to a category of landlords to
obtain speedy possession of the premises which he/she/they may
have let out. The special category of landlords envisaged under D
Section 23-J of the Act are persons who have either retired from
Government service or defence service or company owned or
controlled either by the Central or State Government or such
persons who suffer from some kind of disadvantages like a
physically handicapped person or a widow or divorced wife. The
Madhya Pradesh High Court itself had expanded the meaning E
of the term ‘company’ appearing in Section 23- J(ii) of the Act
by including within the ambit of the said expression the Madhya
Pradesh State Road Transport Corporation. The said order of
the Madhya Pradesh High has been affirmed by this Court by
dismissing the Special Leave Petition against the said order. F

6. If the object of Chapter IIIA of the Act is to provide a speedy
remedy and a special forum for a category of persons who have
retired from service we do not see how the retired employees
of a Municipal Corporation can be legitimately excluded from the
provisions of Section 23-J(ii) of the Act. Doing so would be G
putting Section 23-J of the Act itself to jeopardy. The object of
the Act being what has been noticed above, the classification of
retired persons by inclusion of one class i.e. Government service
etc. and exclusion of another i.e. of Municipal Corporation, in
our considered view, would render the provisions of Section 23-
J(ii) constitutionally fragile. H

A 7. We, therefore, are of the view that reading the provisions of
 Section 23-J(ii) of the Act to include retired employees of the
 Municipal Corporation would further the object behind the
 enactment of Chapter IIIA of the Act. We, therefore, hold that
 the appellant – landlord was fully entitled to avail of the special
 B procedure enjoined by Chapter IIIA of the Act and the decree
 of eviction obtained by him cannot be faulted on the ground of
 lack of jurisdiction of the Tribunal/Forum which had decided the
 matter.”

26. In the above case, thus, although Section 23-J(ii) of the M.P.
 C Accommodation Control Act, 1961 used the expression “company” but
 it was held that it shall also include M.P. State Road Transport
 Corporation as well as Municipal Corporation.

27. In the Negotiable Instruments Act, 1881, Section 141 provides
 for “offences by companies”. Section 141 also uses expression “a
 D company”. This Court had observed that concept of corporate criminal
 liability as contained in Section 141 is attracted to corporation and a
 company. This Court in **Aneeta Hada Vs. Godfather Travels and
 Tours Private Limited, (2012) 5 SCC 661** while considering Section
 141 of Negotiable Instruments Act laid down following in paragraphs
 E 21 and 24:-

“21. At this juncture, we may refer to Section 141 which deals
 with offences by companies. As the spine of the controversy rests
 on the said provision, it is reproduced below:

F “141. *Offences by companies.*—(1) If the person committing
 an offence under Section 138 is a company, every person who,
 at the time the offence was committed, was in charge of, and
 was responsible to the company for the conduct of the business
 of the company, as well as the company, shall be deemed to
 be guilty of the offence and shall be liable to be proceeded
 G against and punished accordingly:

Provided that nothing contained in this sub-section shall render
 any person liable to punishment if he proves that the offence
 was committed without his knowledge, or that he had
 exercised all due diligence to prevent the commission of such
 H offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this chapter. A

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.” B C

24. Section 141 uses the term “person” and refers it to a company. There is no trace of doubt that the company is a juristic person. The concept of corporate criminal liability is attracted to a corporation and company and it is so luminescent from the language employed under Section 141 of the Act. It is apposite to note that the present enactment is one where the company itself and certain categories of officers in certain circumstances are deemed to be guilty of the offence.” D E

28. Patna High Court in **Criminal Misc. No. 7268 of 2005 - Arun Kumar Singh vs. The State of Bihar and Ors.** while noticing Section 141 specifically the Explanation held that the definition of Company as given therein is wider than the definition of Company in the Companies Act and it includes any body corporate. Paragraphs 12 and 13 of the judgment is as follows:- F

“12. Then so far offence under Section 138 of N.I. Act, it is apt to refer, at first, the provisions of Section 141. Section 141 of the Act reads as follows: G

141. Offences by companies.

(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the H

A company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence;

B Provided further that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial Corporation owned or controlled by the Central Govt. or the State Govt., as the case may be, he shall not be liable for prosecution under this Chapter.

(2) ...

Explanation: For the purpose of this section.

D (a) "Company" means any body corporate and includes a firm or other association of individuals; and
(b) "director", in relating to a firm, means a partner in the firm.

E **13.** The Explanation (a) of the above section, therefore, is clear that the definition of Company as given therein is wider than the definition of Company in the Companies Act and it includes any body corporate. Section 5 of the Patna Municipal Corporation Act also shows that the Company is a body corporate. Therefore,
F there cannot be any doubt that Patna Municipal Corporation is a Company under the N.I. Act."

G The above is correct interpretation of Explanation (a) by the Patna High Court. The Explanation of Section 47 of Act, 1974 and the Explanation (a) to Section 141 of the Negotiable Instruments Act are *pari materia*.

H 29. We, thus, looking to the purpose and object of Act, 1974, are of the opinion that Section 47 can be resorted to for offences by body corporate and Karnataka State Pollution Control Board by filing a complaint before the Magistrate for taking cognizance of offence under Section 49 did not commit an error.

30. There is one more aspect of the matter, which need to be A
noticed. Section 49 of the Act, 1974 deals with cognizance of offences,
which is as follows:-

“49. Cognizance of offences.—(1) No court shall take
cognizance of any offence under this Act except on a complaint
made by- B

(a) a Board or any officer authorised in this behalf by it; or

(b) any person who has given notice of not less than sixty
days, in the manner prescribed, of the alleged offence
and of his intention to make a complaint, to the Board C
or officer authorised as aforesaid,

and no court inferior to that of a Metropolitan Magistrate or a
Judicial Magistrate of the first class shall try any offence
punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub- D
section (1), the Board shall, on demand by such person, make
available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report
available to such person if the same is in its opinion, against the
public interest. E

(3) Notwithstanding anything contained in section 29 of the Code
of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for
any Judicial Magistrate of the first class or for any Metropolitan
Magistrate to pass a sentence of imprisonment for a term
exceeding two years or of fine exceeding two thousand rupees F
on any person convicted of an offence punishable under this Act.”

31. Section 49 embraces cognizance of all offences under the
Act. Whether the offences are covered by Section 47 or 48 has no
bearing on the power of the Court to take cognizance of an offence.
Karnataka State Pollution Control Board has filed complaint for taking G
cognizance specifically referring to Section 49 of the Act, 1974. Thus,
in event any offence is committed by anyone, its cognizance can be
taken under Section 49. We, however, reiterate that offences by a body
corporate are to be covered by Section 47, since in event offences by
body corporates are not covered by Section 47, the benefit of Section
47(1) proviso shall not be available to those body corporates, which H

A cannot be the intention of the Legislature. We, thus, conclude that offences by body corporate like City Municipal Council are covered under Section 49 treating it to be offence as by company as provided in Section 47.

32. We may also notice the judgment of this Court in **Criminal Appeal No. 755 of 2010 – V.C. Chinnappa Goudar Vs. Karnataka State Pollution Control Board & Anr.** decided on 10.03.2015, where the judgment of the Division Bench of the Karnataka High Court in **V.C. Chinnappa Goudar (supra)** had been affirmed. In the above case although this Court dismissed the appeal filed by the appellant, who was also a Municipal Commissioner of the Municipal Council, for quashing of the complaint filed by the Karnataka State Pollution Control Board, but the ratio of the judgment is to the effect that sanction under Section 197 Cr.P.C. is not required for proceeding under Section 49 of the Act, 1974. Although reference to Section 48 has been mentioned in the judgment of this Court but there is no further consideration with regard to Section 48.

33. In view of the foregoing discussions, we are of the view that High Court erred in quashing the complaint filed by Karnataka State Pollution Control Board against the respondents.

34. In result, the judgment of the High Court is set aside. The applications filed under Section 482 Cr.P.C. by the respondents stand dismissed. The Magistrate/Metropolitan Magistrate may proceed with the complaints in accordance with law.