A C.V. RAMAN, ETC.

*v.*

MANAGEMENT OF BANK OF INDIA AND ANOTHER, ETC.

APRIL 21, 1988

B [E.S. VENKATARAMIAH AND N.D. OJHA, JJ.]

*Tamil Nadu Shops and Establishment Act, 1947—Andhra Pradesh Shops and Establishments Act, 1966—Kerala Shops and Commercial Establishments Act, 1960—Whether nationalised banks and State Bank of India are establishments under Central Government within the meaning of—Whether provisions of the Acts are not applicable to these Banks in view of exemption contained therein.*

C

**These appeals raised an identical question. Civil Appeals Nos 4291 and 4292 of 1984 were preferred against the judgment of the Madras High Court in Writ Appeals Nos. 561 and 562 of 1983. The** D **appellant in these two appeals, an employee in the Bank of India, which is a Nationalised Bank, was dismissed. Aggrieved, he preferred an appeal under section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (the Tamil Nadu Shops Act). A preliminary objection was raised by the Bank to the effect that the Tamil Nadu Shops Act was not applicable to the Bank in view of the exemption contained in Section** E **4(1)(c) thereof. The Appellate Authority held that the preliminary objection might be decided along with the appeal. The bank thereupon filed two writ petitions in the High Court, one for a direction to the Appellate Authority to dispose of the preliminary objection before disposing of the appeal on merits, and the other, for a direction to the Apellate Authority not to proceed with the appeal. Both the Writ Petitions were** F **allowed by a Single Judge of the High Court on the ground that the Bank was an establishment under the Central Government and consequently the provisions of the Tamil Nadu Shops Act were not applicable to it in view of the exemption contained in this behalf in section 4(1)(c). Against that decision, two writ appeals afore-mentioned were filed, which were dismissed by a Division Bench of the High Court by the** G **Judgment under appeal in these two appeals. The same judgment of the High Court had disposed of Writ Petition No. 1550 of 1981 also, which had arisen out of an application under section 51 of the Tamil Nadu Shops Act made by the employees of the State Bank of India before the Commissioner of Labour for a direction that all the provisions of that Act would apply to them, being employed in the State Bank. The State** H **Bank had contended that it was an establishment under the Central**

Government within the meaning of Section 4(1)(c) of the Tamil Nadu Shops Act and consequently the provisions of that Act were not applicable to it. The Commissioner of labour had rejected the plea of the State Bank and held that the provisions of the Act were applicable to it. Civil Appeal No. 4329 of 1984 was preferred against the said Judgment by the State Bank's Staff Union and Civil Appeal No. 4735 of 1984 was preferred by the employees concerned.

Civil Appeal No. 1120 of 1976 was preferred by Syndicate Bank, a Nationalised Bank, against the judgment of the Andhra Pradesh High Court (Division Bench), dismissing the Writ Appeal No. 268 of 1975 and upholding the order of a Single Judge dismissing the Writ Petition No. 5973 of 1973 filed by the appellant Syndicate Bank. The services of Respondent No. 3 in the appeal had been terminated by the appellant Syndicate Bank. An appeal was preferred by the said respondent before the Labour officer under the Andhra Pradesh Shops and Establishment Act, 1966 (the Andhra Pradesh Shops Act). The Labour officer allowed the appeal which was confirmed in a second appeal by the Labour Court. Aggrieved by these orders, the Bank filed the Writ Petition above-said. It was urged by the appellant Bank that it being an establishment under the Central Government within the meaning of Section 64(1)(b) of the Andhra Pradesh Shops Act, the provisions of that Act including the provisions of appeal were not applicable to it in view of the exemption contained in this behalf. Civil Appeal No. 1042 was preferred by the Syndicate Bank against the judgment of the Andhra Pradesh High Court, dismissing the Writ Petition No. 86 of 1979. Respondent No. 3 in the appeal had been dismissed by the appellant bank. He preferred an appeal which was allowed. The Bank preferred a second appeal before the Labour Court, which was dismissed. The Bank filed the aforesaid writ petition before the High Court and urged that it being an establishment under the Central Government within the meaning of Section 64(1)(b) of the Andhra Pradesh Shops Act, the provisions of that Act were not applicable to it in view of the exemption contained in this behalf. The High Court dismissed the Writ Petition.

Civil Appeal No. 837 of 1984 was preferred by the Bank of India a nationalised bank, against the judgment of the Kerala High Court dismissing the Writ Petition No. 1419 of 1978. Respondent No. 1 in the appeal had preferred an appeal under section 18 of the Kerala Shops and Commercial Establishments Act, 1960 (the Kerala shops Act) against an order passed by the appellant Bank, discharging him from service. A preliminary objection was raised by the Bank with regard to the maintainability of the appeal on the ground that it being an establish-

A ment under the Central Government within the meaning of section 3(1)(c) of that Act, the provisions thereof including section 18 above-said were not applicable to it. The objection was overruled by the appellate authority. The Bank filed the Original Petition above-mentioned in the High Court which dismissed the same.

B

Dismissing the Civil Appeals Nos . 4291 and 4292 of 1984, 4329 of 1984 and 4735 of 1984, and allowing the Civil Appeal Nos. 1120 of 1976, 1042 of 1979 and 837 of 1984, the Court,

HELD: The common question which arose for consideration in all these appeals was as to whether the Nationalised Banks and the State C Bank of India were establishments under the Central Government within the meaning of the Acts above-said and consequently the provisions of the said Acts were not applicable to these Banks ir. view of the exemption contained therein in this behalf. [670E]

D In view of the definition of the term "establishment" read with that of "commercial establishment" contained in the said Acts, it was not disputed even by counsel for the banks, that a bank is an establishment. Consequently, unless exempted, the provisions of the said Acts would apply to the State Bank of India and the nationalised banks also. [670F-G]

E

A conspectus of the provisions of the State Bank of India Act, 1955 (Act No. 23 of 1955) and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act No. 5 of 1970), read with the dictionary meaning of the term "under" leaves no manner of doubt that the State Bank of India and the nationalised banks are clearly F establishments under the Central Government. [677D]

For the employees of these banks, it was urged that these banks were autonomous corporations having distinct juristic entity with a corporate structure of their own and could not as such be treated to be owned by the Central Government. According to counsel, the word G "under" used in the expression "under the Central Government" connoted complete control in the sense of being owned by the Central Government. Disagreeing with that submission it was held that the mere fact that the State Bank of India and the nationalised banks are different entities as corporate bodies for certain purposes cannot by itself be a circumstance from which it may be deduced that they cannot H be establishments under the Central Government. [677E-F; 678A]

If the criteria laid down in *Ajay Hasia, etc.* v. *Khalid Mujib Sehravardi & Ors. etc.,* [1981] 2 S.C.R. 79 decided by a Constitution Bench of this Court, was applied to the facts of these cases, it is obvious that even though the State Bank of India and the nationalised banks may not be owned as such by the Central Government and their employees may not be the employees of the Central Government, they certainly will fall within the purview of the expression "under the Central Government", in view of the existence of deep and pervasive control of the Central Government over these banks. As pointed out by this Court in *Biharilal Dobray* v. *Roshan Lal Dobray,* AIR 1984 S.C. 385, the true test of determination of the question whether a statutory corporation is independent of the Government depends upon the degree of control. [679G-H; 682E-F]

In view of these considerations, no exception could be taken to the view of the Madras High Court in its judgments which were the subject-matter of the Civil Appeal Nos. 4291 and 4292 of 1984, 4375 of 1984 and 4329 of 1984. As regards the judgment of the Kerala High Court and the judgment of the Andhra Pradesh High Court under appeal even if the decisions dealing with Article 12 of the Constitution are not made the foundation for deciding the point in issue, the principles enumerated therein particularly with regard to deep and pervasive control are relevant for deciding the point in issue, and also it was sufficient to point out that for holding that the State Bank of India and the nationalised banks are establishments under the Central Government which have a corporate structure and have freedom in the matter of day-to-day administration, it is not necessary that these banks should be owned by the Central Government or be under its absolute control in the sense of a department of the Government. As regards the circumstances that even though the Reserve Bank of India is mentioned specifically in the relevant clause containing exemption, neither the State Bank of India nor the nationalised banks are so mentioned, it is to be pointed out that the Reserve Bank of India was established as shareholders' Bank under Act 2 of 1934. The Kerala Shops Act and the Andhra Pradesh shops Act, of the years 1960 and 1966, were modelled almost on the pattern of the Tamil Nadu Shops Act, which is of the year 1947. When section 4(1)(c) of this Act referred to the Reserve Bank of India in 1947, it obviously referred to it as the Shareholders' Bank. The Reserve Bank Transfer to Public Ownership Act (Act 82 of 1948) came into force on 1st January, 1949, and it was thereafter that the shares in the capital of the Reserve Bank came to belong to the Central Government. In this background, no undue emphasis could be placed on the circumstances that the State Bank of India or the nationalised banks did

A not find mention in the provision containing exemption even though the Reserve Bank of India was specically mentioned therein. For the reasons stated above, the aforesaid decisions of the Kerala High Court and the Andhra Pradesh High Court deserved to be set aside. [683C-H]

B On the view the Court had taken that the State Bank of India and the nationalised banks are establishments under the Central Government, the Court did not consider the question as to whether these banks were establishments, which not being factories within the meaning of the Factories Act, 1948, were, in respect of matters dealt with in the Tamil Nadu Shops Act, governed by a separate law for the time being in force in the State so as to be entitled to claim exemption C under clause (f) of sub-section (1) of section 4 of the said Act or of the corresponding provisions in the Kerala Shops Act and the Andhra Pradesh Shops Act. [684A-B]

Civil Appeals Nos. 4291 and 4292 of 1984, 4329 of 1984 and 4735 D of 1984 were dismissed. Civil Appeal No. 1120 of 1976 was allowed and the judgment of the High Court in Writ Appeal No. 268 of 1975 as also the judgment of the Single judge in the Writ Petition No. 5973 of 1973 as well as the orders of the Labour Officer in the appeal filed by respondent No. 3 and of the Second Appellate Authority in the second appeal filed by the appellant Bank under the provisions of the Andhra Pradesh E Shops Act were set aside. Civil Appeal No. 1042 of 1979 was allowed and the judgment of the Andhra Pradesh High Court in the Writ Petition No. 86 of 1979 as also the orders passed by the first and second appellate authorities in the appeals preferred by respondent No. 3 and the bank under the Andhra Pradesh Shops Act were set aside. Civil Appeal No. 837 of 1984 was allowed and the judgment of the Kerala F High Court in Writ Petition No. 1419 of 1978 was set aside. The preliminary objection raised by the bank before the Appellate Authority in the appeal filed by respondent No. 1 under section 18 of the Kerala Shops Act to the effect that the said appeal was not maintainable was upheld, with the result that if the said appeal was still pending it would be disposed of as not maintainable and in case it had been decided, the said G decision should be treated as without jurisdiction. [684C-F]

The various employees whose appeals preferred under the Kerala Shops Act or the Andhra Pradesh Shops Act referred to above had been held to be not maintainable and the orders passed therein had been set aside, would be at liberty to take recourse to such other remedies as H might be available to them in law. [684G]

*Ajay Hasia, etc.* **v.** *Khalid Mujib Sehravardi & etc.,* **[1981] 2 SCR 79;** *Heavy Engineering Mazdoor Union* **v.** *The State of Bihar & Ors.,* **[1969] 3 SCR 995;** *Hindustan Aeronautics Ltd.* **v.** *The Workmen and Ors.,* **[1976] 1 SCR 231;** *Graham* **v.** *Public Works Commissioner,* **[1901] 2 K.B. 781;** *Regional Provident Fund Commissioner, Karnataka* **v.** *Workmen represented by the General Secretary, Karnataka Provident Fund Employees' Union and Another,* **[1984] II L.L.J. 503;** *Western Coalfields Ltd.* **v.** *Special Area Development Authority, Korba and Anr.,* **[1982] 2 SCR 1;** *Rashriva Mill Mazdoor Sangh, Nagpur* **v.** *The Model Mills, Nagpur and Anr.,* **[1985] 1 SCR 751;** *Union of India & Ors.* **v.** *N. Hargopal and Ors.,* **[1987] 1 LLJ 545;** *Thote Bhaskara Rao* **v.** *The A.P. Public Service Commission and Ors.,* **Judgment Today 1987 (4) SCC 464 and** *Biharilal Dobray* **v.** *Roshan Lal Dobray,* **AIR 1984 SC 385, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4291-4292 of 1984 etc.

From the Judgment and Order dated 18.4.1984 of the Madras High Court in W.A. Nos. 561 and 562 of 1983.

K.N. Bhatt, V.C. Mahajan, Ms. R. Vegai, Mr. N.G.R. Prasad, C.S. Vaidyanathan, Ravinder Bhatt, K.V. Mohan, S.R. Setia, Raj Birbal, Ambrish Kumar, R.P. Kapoor, Vijay Kumar Verma, G.N. Rao, K. Ram Kumar, M.A. Firoz, P.K. Pillai, C.V. Subba Rao, M. Satyanarain Rao and G. Narasihamalu for the appearing parties.

The Judgment of the Court was delivered by

**OJHA, J.** These appeals raise an identical question and are as such being decided by a common judgment. Before coming to the question involved in these appeals it would be necessary to give in brief the facts of each of these cases to indicate the circumstances in which the said question arises. Civil Appeal Nos. 4291-4292 of 1984 have been preferred against the judgment dated 18th April, 1984 of the Madras High Court in Writ Appeal Nos. 561 and 562 of 1983. C.V. Raman, the appellant in these two appeals was an employee in the Bank of India which is a Nationalised Bank. He was dismissed from service in pursuance of disciplinary action for certain charges framed against him. Aggrieved, he preferred an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as the Tamil Nadu Shops Act). A preliminary objection was raised on behalf of the Bank of India to the effect that the Tamil

A Nadu Shops Act was not applicable to the Bank in view of the provisions contained in Section 4(1)(c) thereof which exempted *inter alia* an establishment under the Central Government from the purview of that Act. The Appellate Authority, however, took the view that it was a case where the preliminary objection may be decided along with the appeal. The Bank of India thereupon filed two writ petitions in the B High Court being Writ Petition Nos. 2013 and 2014 of 1979. The prayer contained in Writ Petition No. 2013 of 1979 was for the issue of a writ of mandamus directing the Appellate Authority to dispose of the preliminary objection before taking up the appeal for hearing on merits. In Writ Petition No. 2014 of 1979 on the other hand a prayer was made for the issue of a writ of prohibition directing the Appellate C Authority not to proceed with the appeal. Both these writ petitions were allowed by a learned Single Judge of the Madras High Court accepting the plea raised by the Bank of India that it was an establishment under the Central Government and consequently the provisions of the Tamil Nadu Shops Act were not applicable to it in view of the exemption contained in this behalf in Section 4(1)(c). The two writ D appeals referred to above were filed by the appellant against the decision in the aforesaid writ petitions which, however, were dismissed by a Division Bench of the High Court by the judgment which is under appeal in these two civil appeals. By the same judgment a Division Bench of the High Court also dismissed Writ Petition No. 1550 of 1981. The petitioners of the said writ petition who were employees of E the State Bank of India made an application under Section 51 of the Tamil Nadu Shops Act before the Commissioner of Labour with a request to hold that all the provisions of that Act would apply to them as persons employed in the State Bank of India. A preliminary objection was raised on behalf of the State Bank of India that it was an establishment under the Central Government within the meaning of F Section 4(1)(c) of the Tamil Nadu Shops Act and consequently the provisions of that Act were not applicable to it. The Commissioner of Labour, however, rejected the plea of the State Bank of India and held that the provisions of the Act were applicable to it. It is this order of the Commissioner of Labour which was sought to be quashed by a writ of certiorari in Writ Petition No. 1550 of 1981. On the view that the G State Bank of India was also an establishment under the Central Government the writ petition was allowed. Civil Appeal No. 4329 of 1984 has been preferred against the said judgment by the State Bank's Staff Union whereas Civil Appeal No. 4735 of 1984 has been preferred by the employees concerned.

H Civil Appeal No. 1120 of 1976 has been preferred against the

judgment of the Andhra Pradesh High Court dated 3rd February, 1976 in Writ Appeal No. 268 of 1975 upholding the order of a learned Single Judge dated 14th November, 1974 in Writ Petition No. 5973 of 1973. S. Rama Moorthy who is Respondent No. 3 in this appeal was an employee of the appellant, Syndicate Bank which is a Nationalised Bank. His services were terminated and an appeal was preferred by Respondent No. 3 before the Labour Officer under the Andhra Pradesh Shops and Establishment Act, 1966 (hereinafter referred to as the Andhra Pradesh Shops Act). The Labour Officer allowed the said appeal which was confirmed in a second appeal by the Labour Court. Aggrieved by these orders the appellant-Bank filed writ petition No. 5973 or 1973 for quashing of these orders. One of the pleas raised in the writ petition by the appellant was that it being an establishment under the Central Government within the meaning of Section 64(1)(b) of the Andhra Pradesh Shops Act the provisions of that Act including the provisions of appeal were not applicable to it in view of the exemption contained in this behalf and consequently the orders passed in the appeals by the Labour Officer and the Labour Court were without jurisdiction. This plea, however, did not find favour with the learned Single Judge who decided the writ petition and the writ petition was consequently dismissed. The Writ Appeal No. 268 of 1975 preferred by the appellant-Bank against that judgment was dismissed by a Division Bench of the High Court by the judgment which is the subject-matter of this civil appeal.

Civil Appeal No. 1042 of 1979 has been preferred against the judgment of the Andhra Pradesh High Court dated 24th January, 1979 in Writ Petition No. 86 of 1979. N. Satyanarayan Murthy who is Respondent No. 3 in this appeal was an employee of the appellant-Syndicate Bank which is a Nationalised bank and was dismissed after being found guilty of certain charges in disciplinary proceedings initiated against him. He preferred an appeal which was allowed. The Bank preferred a second appeal before the Labour Court which was dismissed. Thereafter the appellant-Bank filed the aforesaid Writ Petition No. 86 of 1979 before the High Court and urged that it being an establishment under the Central Government within the meaning of Section 64(1)(b) of the Andhra Pradesh Shops Act the provisions of that Act were not applicable to it in view of the exemption contained in this behalf. Relying on the judgment in Writ Appeal No. 268 of 1975 which is the subject-matter of Civil Appeal No. 1120 of 1976 this writ petition was dismissed by the judgment which is under appeal in this civil appeal.

A Civil Appeal No. 837 of 1984 has been preferred against the judgment dated 8.4.1981 of the Kerala High Court in a writ petition being Original Petition No. 1419 of 1978. P.A. Stalin, Respondent No. 1 in this appeal who was an employee of the Bank of India, a Nationalised Bank, preferred an appeal under Section 18 of the Kerala B Shops and Commercial Establishments Act, 1960 (hereinafter referred to as the Kerala Shops Act) against an order passed by the Bank discharging him from service after conducting a domestic inquiry. A preliminary objection was raised by the appellant-Bank with regard to the maintainability of the appeal on the ground that it being an establishment under the Central Government within the meaning of Section 3(1)(c) of that Act, the provisions thereof including Section 18 C under which the appeal had been preferred were not applicable to it. This objection was, however, overruled by the Appellate Authority and Original Petition No. 1419 of 1978 was filed by the Bank in the High Court challenging the order of the Appellate Authority. The High Court did not agree with the contention of the appellant-Bank and dismissed the Original Petition aforesaid by its judgment dated D 8.4.1981 and it is this judgment which is under appeal, as seen above, in this civil appeal.

The common question which arises for consideration in all these appeals is as to whether the Nationalised Banks and the State Bank of India are establishments under the Central Government within the E meaning of the Acts referred to above and consequently the provisions of the said Acts are not applicable to these Banks in view of the exemption contained in this behalf therein.

In view of the definition of the term "establishment" read with that of "commercial establishment" contained in the Acts referred to F above it has not been disputed even by the learned counsel for the various banks that a bank is an establishment. Consequently unless exempted the provisions of the said Acts shall apply to the State Bank of India and the nationalised banks also. Tamil Nadu Shops Act which is of the year 1947 and which really seems to be the precursor and foundation of the Kerala Shops Act and the Andhra Pradesh Shops G Act which are of the years 1960 and 1966 respectively contains exemptions in Section 4. Sub-section (1) of Section 4 starts with the words "Nothing contained in this Act shall apply to—". Thereafter it contains clauses (a) to (f) which describe the persons and establishments who are exempted from the operation of the Act. Clauses (c) and (f) H read as hereunder:

"(c) establishments under the Central and State Governments, local authorities, the Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of Article 366 of the Constitution and cantonment authorities;

(f) establishments which, not being factories within the meaning of the Factories Act, 1948, are, in respect of matters dealt with in this Act, governed by a separate law for the time being in force in the State."

What has to be considered is as to whether the State Bank of India and the nationalised banks can be said to be establishments under the Central Government as contemplated by clause (c) aforesaid. What does the word "under" in the said clause mean in the context in which it appears? That is the crucial question which arises for consideration in these cases. The said word 'under' not having been defined in the concerned Acts, recourse may be had to its dictionary meanings. Some of them are as follows:

"In or into a condition of subjugation, regulation or subordination." (Webster's Third New International)

"Subordinate or lower rank or position".

"In senses denoting subordination or subjugation, with abstract or other subject, denoting the authority or control, direction, case, examination restraint, etc."

"In or into a position or state of subjugation or submission." (Shorter Oxford English Dictionary)

"Subordinate subjected to." (The Compact Edition of the Oxford Dictionary)

"Subject to the authority, rule, control of"

"subject to the supervision instruction or influence of" (The Grolier International Dictionary)

"In a position of inferiority or subordination to, subject to the rule, government, direction guidance, instruction, or influence of, as, he is under my care, I served under his father."

A "In a state of liability, obligation."

"Lower in authority, position,, power etc., subordinate."

"held in control or restraint, used predicatively." (Webster's Dictionary of the English Language—Encyclo-
B paedia)

"The term sometimes used in its literal sense of 'below in position' but more frequently in its secondary meaning of 'inferior' or subordinate." (Boviar's Law Dictionary)

C "Inferior, subordinate of lower rank or position (10)—Denoting subordination to; or control by, a person or persons having or exercising, recognising authority or command."

"with abstract or other subs. denoting authority or control,
D with or without specification of the person or persons exercising it." (The Compact Edition of the Oxford English Dictionary)

"Under has the same significance as 'by virtue of' by or through the authority of" (In Venkataramiya's Law
E Lixicon)

"The word "under" may be used in statute in its literal sense as indicating condition of inferiority or subservience or as meaning subject to or in conformity with, denoting curtailment or restriction of, but nevertheless agreement or
F congruity with, something else to which it is made applicable. Alsop v. pierce, 19 So.2d 799, 802, 155 Fla. 184" (Words and Phrases Permanent Edition)

We may now advert to the composition and constitution of the State Bank of India and the nationalised banks. The preamble of the
G State Bank of India Act, 1955 (hereinafter referred to as Act No. 23 of 1955) reads as under:

"Whereas for the extension of banking facilities on a large scale, more particularly in the rural and semi-urban areas, and for diverse other public purposes it is expedient to
H constitute a State Bank for India, and to transfer to it the

undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto."

Section 3 provides that a bank to be called the State Bank of India shall be constituted to carry on the business of a banking and other business in accordance with the provisions of the Act and for the purpose of taking over the undertaking of the Imperial Bank. It further provides that the Reserve Bank together with such other persons as may from time to time become shareholders in the State Bank in accordance with the provisions of this Act, shall, so long as they are shareholders in the State Bank, constitute a body corporate with perpetual succession and a common seal under the name of the State Bank of India and shall sue and be sued in that name. It shall have power to acquire and hold property, whether movable or immovable for the purposes for which it is constituted to dispose of the same. According to Section 4 the authorised capital of the State bank is to be twenty crores of rupees divided into twenty lakhs of fully paid up shares of one hundred rupees each. The Central Government, however has been given the power to increase or reduce the authorised capital as it thinks fit so, however that the shares in all the cases shall be fully paid up shares of one hundred rupees each. Likewise the Central Government under Section 5(2) has been given the power from time to time to increase issued capital in the manner stated therein. Sub-section (3) contemplates that no increase in the issued capital beyond twelve crores and fifty lakhs of rupees shall be made without the previous sanction of Central Government. Section 6 contemplates that all shares in the capital of the Imperial Bank shall be transferred to and shall vest in the Reserve Bank free of all trusts, liabilities and encumbrances and the undertaking of the Imperial Bank shall be transferred to and shall vest in the State bank subject to the other conditions laid down therein. Under sub-section (2) of Section 7 the power to determine as to whether persons mentioned therein have observed the conditions contemplated by the said sub-section has been given to the Central Government and its decision has been made final. Sub-section (3) of Section 7 contemplates that the appointment, promotion or increment contemplated by the said sub-section as have been confirmed by the Central Government shall have effect or be payable or claimable. Likewise, the continued grant of the pension, allowance or other benefit, as the case may be, has been made subject to the direction of the Central Government in this behalf. Section 8 contemplates that for the persons who immediately before the appointed day were the trustees of the funds mentioned therein, there shall be substituted as trustees such persons

as the Central Government may by general or special order specify. Sub-section (1) of Section 16 contemplates that the Central office of the State Bank shall be at Bombay. The Central Government, however, has been conferred with the power to provide otherwise by Notification in the Official Gazette. Sub-section (5) of Section 16 provides that notwithstanding anything contained in sub-section (4) the State Bank shall establish not less than four hundred branches in addition to the branches referred to in sub-section (3) within five years of the appointed day, or such extended period as the Central Government may specify in this behalf and the places where such additional branches are to be established shall be determined in accordance with any such programme as may be drawn up by the Central Government from time to time in consultation with the Reserve bank and the State Bank. Even though in view of Section 17 the general superintendence and direction of the affairs and business of the State Bank have been entrusted to the Central Board, Section 18 contemplates that in the discharge of its functions the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank, give to it and that if any question arises whether the direction relates to a matter of policy involving public interest, the decision of the Central Government thereon is to be final. Section 19 deals with the composition of the Central Board. Clauses (a), (b), (c), (ca), (cb) and (e) of sub-section (1), sub-sections (1A), (2) and (3A) indicate that the Central Government has been given extensive power in the matter of composition of the Central Board. Section 45 provides that no provision of law relating to the winding up of companies shall apply to the State Bank and the State Bank shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct. This Section, therefore, entitles the Central Government even to liquidate the State Bank. Section 49 confers power on the Central Government in consultation with the Reserve Bank to make rules to provide for all matters mentioned therein. The power given under section 50 to the Central Board to make regulations has been made subject to the previous sanction of the Central Government. These provisions indicate that the Central Government has a deep and pervasive control over the State Bank of India.

Almost similar is the position with regard to the nationalised banks also. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as Act No. 5 of 1970) was enacted to provide for acquisition and transfer of the undertakings

of certain banking companies having regard to their size, resources, coverage and organisation, in order to control the heights of the economy and to meet progressively and serve better the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto. Clauses (d) and (f) of Section 2 of this Act define "corresponding new banks" and "existing banks". First Schedule to the Act in column 1 enumerates the names of the existing banks whereas in column 2 the names of the corresponding new banks. Sections 3 and 4 indicate that the corresponding new banks which are constituted on the commencement of this Act have taken over the undertakings of the concerned existing banks. Section 6 contemplates that every existing bank shall be given by the Central Government such compensation in respect of transfer under Section 4 to the corresponding new banks of the undertakings of the existing banks as is specified against each such bank in the Second Schedule. Section 7 provides that the Head Officer of each corresponding new bank shall be at such place as the Central Government may by Notification in the Official Gazette specify in this behalf. The general superintendence, direction and management of the affairs and business of a corresponding new bank are to vest in a Board of Directors and it is the Central Government which in consultation with the Reserve Bank has been given the power under sub-section (3) to constitute the first Board of Directors consisting of not more than seven persons to be appointed by the Central Government. The proviso to the said sub-section authorises the Central Government if it is of opinion that it is necessary in the interests of the corresponding new bank so to do to remove a person from the membership of the first Board of Directors and appoint any other person in his place. The proviso to sub-section (5) to Section 7 contemplates that the Central Government may if the Chairman of an existing bank declines to become or to continue the function as a Custodian of the corresponding new bank or it is of opinion that it is necessary in the interests of the corresponding new bank, so to do, appoint any other person as the Custodian of a corresponding new bank and the Custodian so appointed shall receive such emoluments as the Central Government may specify in this behalf. According to sub-section (6) thereof the Custodian is to hold office during the pleasure of the Central Government. Section 8 on the other hand contemplates that every corresponding new bank shall in the discharge of its functions be guided by such directions in regard to matters of policy involving public interest as the Central Government may after consultation with the Governor of the Reserve Bank give. Sub-section (1) of Section 9 of this Act confers power on the Central Government to make a scheme for carry-

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A ing out the provisions of this Act after consultation with the Reserve Bank. Sub-section (2) of Section 9 provides that in particular and without prejudice to the generality of the power contained in sub-section (1) of the scheme may provide for the capital structure of the corresponding new bank, the constitution of the Board of Directors by whatever name called of the corresponding new bank and all such B matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient, the re-constitution of any corresponding new bank into two or more corporations, the amalgamation of any corresponding new bank with any other corresponding new bank or with another banking institution, the transfer of the whole or any part of the undertaking of a corresponding new bank to any other banking institution or the transfer of the whole C or any part of the undertaking of any other banking institution to a corresponding new bank and such incidental, consequential and supplemental matters as may be necessary to carry out the provisions of this Act. Sub-section (4) entitles the Central Government in consultation with the Reserve Bank to make a scheme to amend or vary any D scheme made under sub-section (1). Sub-section (5) *inter alia* contemplates that the scheme so prepared by the Central Government shall be binding on the corresponding new banks or coprorations or banking institutions and also on all other persons mentioned therein. Section 10 deals with closure of accounts and disposal of profits. Sub-section (2) thereof contemplates that the remuneration payable to every E auditor of a corresponding new bank shall be such as the Reserve Bank may fix in consultation with the Central Government. Under sub-section (4) every auditor of a corresponding new bank has to make a report to the Central Government upon the annual balance sheet and accounts and such report shall contain what is provided for in clauses (a) to (e). Sub-section (7) contemplates that after making provision for F monies specified therein a corresponding new bank shall transfer the balance of profits to the Central Government. Sub-section (7A) makes it obligatory on every corresponding new bank to furnish to the Central Government the annual balance sheet, the profit and loss account and the auditor's report and a report by its Board of Diretors on the working and activities of the bank during the period covered by the G accounts. In view of sub-section (8) the Central Government shall cause every auditor's report and report on the working and activities of each corresponding new bank to be laid before each House of Parliament. Sub-section (9) without prejudice to the provisions contained earlier authorises the Central Government, at any time, to appoint such number of auditors as it thinks fit to examin and report on the H accounts of a corresponding new bank. Sub-section (3) of Section 12

contemplates that for the persons who immediately before the commencement of this Act were the trustees for any pension, provident, gratuity or other life fund constituted for the officers or other employees of an existing bank there shall be substituted as trustees such persons as the Central Government may by general or special order specify. Section 18 of this Act is in *pari materia* with Section 45 of the State Bank of India Act. It provides that no provision of law relating to winding up of corporations shall apply to a corresponding new bank and no corresponding new bank shall be placed in liquidation save by order of the Central Government and in such manner as it may direct. A nationalised bank also can, therefore, like the State Bank of India, be liquidated by the Central Government. Under Section 19 the power of the Board of Directors of a corresponding new bank to make regulations is subject to obtaining the previous sanction of the Central Government.

A conspectus of the provisions of Act No. 23 of 1955 and Act No. 5 of 1970 read with the meanings of the term "under" referred to above leaves no manner of doubt that the State Bank of India and the nationalised banks are clearly establishments under the Central Government.

For the employees of these banks it was urged by their learned counsel that these banks are autonomous corporations having distinct juristic entity with a corporate structure of their own and cannot as such be treated to be owned by the Central Government. According to learned counsel the word "under" used in the expression "under the Central Government" connotes complete control in the sense of being owned by the Central Government. We find it difficult to agree with this submission. We shall shortly deal with the legal position with regard to an autonomous corporation having distinct juristic entity with a corporate structure. Suffice it to say at this place that to uphold the submission of learned counsel for the employees the word "under" will have to be substituted by the word "of" in the relevant sub-section. It is obvious that the word "under" 'cannot be taken to have the same meaning as word "of" which may bring in the notion of ownership. Had that been the intention of the Legislature we find no cogent reason as to why the word "of" was not used in place of the word "under" in the relevant sub-section. Indeed the concept of "under" can be relevant only when there are two entities one of which may be under the other. A department of the Government strictly speaking is a part of the Government and can only loosely be termed as under the Government. Consequently the mere fact that the State

A Bank of India and the nationalised banks are different entities as corporate bodies for certain purposes cannot by itself be a circumstance from which it may be deduced that they cannot be establishments under the Central Government. Some of the cases on which reliance was placed by the High Court of Madras in taking the view that these banks were establishments under the Central Government
B had been rendered with reference to Article 12 of the Constitution. It was urged by learned counsel for the employees that since Article 12 of the Constitution defining the term "State" so as to include authorities under the control of the Government of India occurs in Part III of the Constitution dealing with fundamental rights, the decisions in the cases dealing with Article 12 could not be made the basis for the
C decision that the State Bank of India and the nationalised banks were establishments under the Central Government within the meaning of the Acts referred to above with regard to shops and commercial establishments. Even though that be so, it cannot be gainsaid that the salient principles which have been laid down in those cases with regard to the authorities having a corporate structure and exercising auto-
D nomy in certain spheres will certainly be useful for determining as to whether the State Bank of India and the nationalised banks are establishments under the Central Government. *Ajay Hasia etc.* v. *Khalid Mujib Sehravardi & Ors. etc.*, [1981] 2 S.C.R. Page 79 is a decision of a Constitution Bench of this Court. The question which came up for consideration in that case was whether Jammu and
E Kashmir Regional Engineering College, Srinagar registered as a society under the Jammu and Kashmir Registration of Societies Act, 1898 was a "State" under Article 12 of the Constitution and as such amenable to writ jurisdiction. It was held:

> "But as the tasks of the Government multiplied with the
> F 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 specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be
> G realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilised by the
> H Government for setting up and running public enterprises

and carrying out other public functions. Today with increasing assumption by the government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases "the true owner is the State, the real operator is the State and the effective controllorate is the State and accountability for its actions to the community and to Parliament is of the State". *It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount off autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliberate the true nature of the reality behind which is the Government."* (Emphasis supplied)

If the criteria laid down above is applied to the facts of the instant cases it is obvious that even though the State Bank of India and the nationalised banks may not be owned as such by the Central Government and its employees may not be the employees of the Central Government they certainly will fall within the purview of the expression "under the Central Government", in view of the existence of deep and pervasive control of the Central Government over these banks.

A Learned counsel for the employees placed reliance on the decision of this Court in *Heavy Engineering Mazdoor Union* v. *The State of Bihar & Ors.*, [1969] 3 S.C.R. Page 995 where at page 998 it was held that the words "under the authority of" mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the B authority of his principal or master and that the same obviously cannot be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and regulated by its memorandum of association and the articles of association and which has a separate existence recognised as a juristic person. In our opinion that decision is clearly distinguishable. The question which came up for consideration in that case was whether an industry carried C on by a company incorporated under the Companies Act was an industry carried on "under the authority of" the Central Government so that the Central Government may be the appropriate Government for making a reference under the Industrial Disputes Act, 1947. In the instant cases we are not concerned with the question as to whether the D various banks referred to above are carried on "under the authority of" the Central Government. The question, as seen above, which falls in these cases for consideration is whether in view of the existence of deep and pervasive control of the Central Government over these banks they are establishments under the Central Government for purposes of the Acts aforesaid dealing with Shops and Commercial E Establishments. Reliance was also placed by learned counsel on *Hindustan Aeronautics Ltd.* v. *The Workmen and Ors.*, [1976] 1 S.C.R. 231 where again in the context of the Industrial Disputes Act the same view was taken relying on the earlier decision in the case of *Heavy Engineering Mazdoor Union* (supra). In this connection it may be noticed that even in the case of *Heavy Engineering Mazdoor Union* F (supra) it was observed that the question whether a corporation is an agent of the State would depend upon the facts of each case. After referring to the decision in *Graham* v. *Public Works Commissioner*, [1901] 2 KB 781 it was observed that where a State setting up a corporation so provided such a corporation could be easily identified as the agent of the State. This distinction was noticed in a subsequent G decision of this Court in *Regional Provident Fund Commissioner, Karnataka* v. *Workmen represented by the General Secretary, Karnataka*, [1984] II L.L.J. Page 503 Provident Fund Employees' Union and Another. Reliance was then placed by learned counsel for the employees on the following observations in the case of *Western Coalfields Ltd.* v. *Special Area Development Authority, Korba and* H *Anr.*, [1982] 2 S.C.R. Page 1:

"The third contention of the Attorney General flows from the provisions of article 285(1) of the Constitution which says that the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State. Section 127A(2) of the Madhya Pradesh Municipalities Act and Section 136 of the Madhya Pradesh Municipal Corporation Act also provide that the property tax shall not be leviable, *inter alia*, on "buildings and lands owned by or vesting in the Union Government". Relying on these provisions, it is contended by the Attorney General that since the appellant companies are wholly owned by the Government of India, the lands and buildings owned by the companies cannot be subjected to property tax. The short answer to this contention is that even thogh the entire share capital of the appellant companies has been subscribed by the Government of India, it cannot be predicated that the companies themselves are owned by the Government of India. The companies, which are incorported under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and buildings are vested in and owned by the companies; the Government of India only owns the share capital."

In our opinion this decision too is hardly of any assistance inasmuch as in the instant cases the Banks are not asserting that they are owned by the Central Government. The other case on which the learned counsel for the employees relied on is *Rashtriya Mill Mazdoor Sangh, Nagpur* v. *The Modal Mills, Nagpur and another,* [1985] 1 S.C.R. Page 751. That case again is distinguishable. The question which came up for consideration in that case was with regard to the consequence that ensued on the issue of a notified order appointing authorised Controller under Section 18A of the Industries (Development & Regulation) Act, 1951. It was pointed out that the consequence of such a notified order being issued is to divert the management from the present managers and to vest it in the authorised Controller. It could not be said that on the issue of such an order the industrial undertaking is engaged in the industry carried on under the authority of the department of the Central Government inasmuch as the expression "under the authority of any department of the Central Government" in ordinary parlance means that the department is directly responsible for the management of the industrial undertaking. It was further pointed out that the power to regulate the management or control the management is entirely

A distinguishable from the power to run the industry under the authority of the department of the Central Government. As seen above, no such question arises in the instant cases while determining the point as to whether the banks referred to above are establishments under the Central Government. *Union of India and others* v. *N. Hargopal and others,* [1987] 1 L.L.J. Page 545 on which reliance was next placed was B a case where the question arose as to whether establishments in public sector were covered by the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. In the context of certain executive instructions issued by the Government of India it was held that while the Government was at perfect liberty to issue instructions to its own departments and organisations provided the instructions do not contravene any constitutional provision or any statute, C these instructions cannot bind other bodies which are created by statute and which function under the authority of a statute. This decision also obviously is of no assistance in deciding the point which has been raised in the instant cases.

D Learned counsel for the employees also referred to the decision of this Court in *Thote Bhaskara Rao* v. *The A.P. Public Service Commission and others,* Judgment Today 1987 (4) S.C.C. Page 464 where it was held that employees in Hindustan Shipyard which was a Government owned undertaking could not be equated with the employees of the Government. Since in the instant cases the employees of the State E Bank of India or the nationalised banks are not asked to be treated as employees of the Central Government this decision too is of no assistance. As pointed out by this Court in *Bihari Lal Dobray* v. *Roshan Lal Dobray* AIR 1984 SC 385 the true test of determination of the question whether a statutory corporation is independent of the Government depends upon the degree of control. In this view of the matter we are of F opinion that no exception can be taken to the view of the Madras High Court in its judgments which are the subject-matter of Civil Appeal Nos. 4291-4292 of 1984, 4735 of 1984 and 4329 of 1984. As regards the judgment of the Full Bench of the Kerala High Court which is the subject-matteer of Civil Appeal No. 837 of 1984 and the judgments of the Andhra Pradesh High Court which are the subject-matter of Civil G Appeal Nos. 1042 of 1979 and 1120 of 1976 it may be pointed out that what has weighed with the learned Judges who decided these cases is:

(1) that the decisions dealing with the term "other authorities" within the meaning of Article 12 of the Constitution were not of much assistance;

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(2) that the Central Government exercises control over the nationalised banks only to a limited extent and that there was nothing to enable such banks to identify with the Central Government particularly when as a legal person these banks have got a right to hold and acquire property and have almost full freedom in the matter of day to day administration.

(3) Even though in the relevant clause containing exemption the Reserve Bank of India had been mentioned there was no such mention with regard to nationalised banks.

As regards the first reason referred to above we have already pointed out that even if the decisions dealing with Article 12 of the Constitution are not made the foundation for deciding the point in issue, the principles enumerated therein referred to above particularly with regard to deep and pervasive control are relevant for deciding the point in issue. As regards the second reason referred to above suffice it to point out that for holding that the State Bank of India and the nationalised banks are establishments under the Central Government which have a corporate structure and have freedom in the matter of day to day administration it is not necessary that these banks should be owned by the Central Government or be under its absolute control in the sense of a department of the Government. With regard to the last reason namely the circumstance that even though Reserve Bank of India is mentioned specifically in the relevant clause containing exemption neither State Bank of India nor the nationalised banks are so mentioned, it may be pointed out that the Reserve Bank of India was established as Shareholders' Bank under Act 2 of 1934. As seen above, the Kerala Shops Act and the Andhra Pradesh Shops Act which are of the years 1960 and 1966 respectively were modelled almost on the pattern of the Tamil Nadu Shops Act which is of the year 1947. When Section 4(1)(c) of this Act referred to the Reserve bank of India in 1947 it obviously referred to it as Shareholders' Bank. The Reserve Bank Transfer to Public Ownership Act (Act 82 of 1948) came into force on 1st January, 1949 and it was thereafter that the shares in the capital of the Reserve Bank came to belong to the Central Government. In this background no undue emphasis can be placed on the circumstance that the State Bank of India or the nationalised banks did not find mention in the provision containing exemption even though Reserve Bank of India was specifically mentioned therein. For the reasons stated above the aforesaid decisions of the Kerala High Court and the Andhra Pradesh High Court deserve to be set aside.

A On the view which we have taken namely that the State Bank of India and the nationalised banks are establishments under the Central Government we do not find it necessary to consider the question as to whether these banks are establishments which not being factories within the meaning of the Factories Act, 1948 are, in respect of matters dealt with in the Tamil Nadu Shops Act governed by a separate law far the time being in force in the State so as to be entitled to claim exemption under clause (f) of sub-section (1) of Section 4 of the said Act or of the corresponding provisions in the Kerala Shops Act and the Andhra Pradesh Shops Act.

In the result, Civil Appeal Nos. 4291-4292 of 1984, 4329 of 1984 and 4735 of 1984 are dismissed. Civil Appeal No. 1120 of 1976 is allowed and the judgment of the Division Bench of the High Court dated 3rd February, 1976 in Writ Appeal No. 268 of 1975 as also the judgment of the learned Single Judge dated 14th November, 1974 in Writ Petition No. 5973 of 1973 as well as the orders of the Labour Officer in the appeal filed by Respondent No. 3 and of the Second Appellate Authority in the second appeal filed by the appellant-bank under the provisions of the Andhra Pradesh Shops Act are set aside. Civil Appeal No. 1042 of 1979 is also allowed and the judgment of the Andhra Pradesh High Court dated 24th January, 1979 in Writ Petition No. 86 of 1979 as also orders passed by the first and second appellate authorities in the apeals preferred by Respondent No. 3 and the bank respectively under the Andhra Pradesh Shops Act are set aside. Civil Appeal No. 837 of 1984 is also allowed and the judgment of Kerala High Court in Writ Petition No. 1419 of 1978 is set aside. The preliminary objection raised on behalf of the bank before the Appellate Authority in the appeal filed by Respondent No. 1 under Section 18 of the Kerala Shops Act to the effect that the said appeal was not maintainable is upheld. With the result that if the said appeal is still pending it shall be disposed of as not maintainable and in case it has been decided the said decision shall be treated as without jurisdiction. The various employees whose appeals preferred under the Kerala Shops Act or the Andhra Pradesh Shops Act preferred to above have been hold to be not maintainable and the orders passed therein have been set aside shall be at liberty to take recourse to such other remedies as may be available to them in law. In the circumstances of the case, however, there shall be no order as to costs in any of these appeals.

S.L. Civil Appeal Nos. 4291-4292, 4329 & 4735/84 dismissed and C.A. Nos. 1120/76, 1042/79 & 837/84 allowed.