+IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*****

Writ Petition Nos.18205, 21660, 40864 of 2014; 10993, 15286, 16870, 17215, 17254, 17349, 18395, 18505, 18660, 18813, 19030, 19256, 20279, 22432, 22866, 24885, 24914, 24924, 25192, 25350, 26781, 27048, 27312, 27330, 33371, 39193, 41047, 41348, 41432, 42400 of 2015; 720, 727, 740, 796, 846, 918, 2292, 2828, 5071, 10476, 10620, 10670, 11120, 12468, 14344, 14668, 14679, 14750. 14916, 15204, 15361, 15518, 15548, 15717, 15741, 15893, 16313, 16453, 16774, 16821, 16834, 16925, 17422, 17426, 17489, 17845, 17847, 17852, 17865, 17876, 18057, 18138, 18525, 18539, 18627, 18640, 18706, 18736, 18757, 18789, 18791, 18792, 18798, 18815, 18817, 18945, 18993, 19161, 19162, 19172, 19239, 19246, 19320, 19983, 19990, 19993, 20038, 20045, 20060, 20077, 20228, 20275, 20379, 20381, 20452, 20495, 20814, 20815, 20836, 20845, 20849, 20876, 20898, 20989, 21127, 21132, 21135, 21287, 21315, 21437, 21584, 21638, 21675, 21678, 21757, 21808, 21826, 21833, 21836, 21847, 21875, 21890, 22054, 22112, 22174, 22206, 22282, 22449, 22505, 22544, 22587, 22590, 22634, 22891, 23376, 23380, 23503, 23505, 23515, 23540, 23602, 23684, 23780, 23808, 23861, 24029, 24062, 24122, 24142, 24210, 24213, 24363, 24661, 24703, 24722, 24754, 24786, 24916, 25192 and 25201 of 2016.

***

W.P.No.18205 of 2014

Between:

G.Rama Mohan Rao & Anr.

.... Petitioners

and

The Government of Andhra Pradesh, rep, by its Principal Secretary and Chairman, Agricultural, Marketing & Cooperative Department, Secretariat, Hyderabad & Anr.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 07.03.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? --

2. Whether the copies of judgment may be marked to Law Reports/Journals - Yes-

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes-

RAMESH RANGANATHAN, ACJ

*** THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**
AND
***THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ **Writ Petition Nos.18205, 21660, 40864 of 2014; 10993, 15286, 16870, 17215, 17254, 17349, 18395, 18505, 18660, 18813, 19030, 19256, 20279, 22432, 22866, 24885, 24914, 24924, 25192, 25350, 26781, 27048, 27312, 27330, 33371, 39193, 41047, 41348, 41432, 42400 of 2015; 720, 727, 740, 796, 846, 918, 2292, 2828, 5071, 10476, 10620, 10670, 11120, 12468, 14344, 14668, 14679, 14750. 14916, 15204, 15361, 15518, 15548, 15717, 15741, 15893, 16313, 16453, 16774, 16821, 16834, 16925, 17422, 17426, 17489, 17845, 17847, 17852, 17865, 17876, 18057, 18138, 18525, 18539, 18627, 18640, 18706, 18736, 18757, 18789, 18791, 18792, 18798, 18815, 18817, 18945, 18993, 19161, 19162, 19172, 19239, 19246, 19320, 19983, 19990, 19993, 20038, 20045, 20060, 20077, 20228, 20275, 20379, 20381, 20452, 20495, 20814, 20815, 20836, 20845, 20849, 20876, 20898, 20989, 21127, 21132, 21135, 21287, 21315, 21437, 21584, 21638, 21675, 21678, 21757, 21808, 21826, 21833, 21836, 21847, 21875, 21890, 22054, 22112, 22174, 22206, 22282, 22449, 22505, 22544, 22587, 22590, 22634, 22891, 23376, 23380, 23503, 23505, 23515, 23540, 23602, 23684, 23780, 23808, 23861, 24029, 24062, 24122, 24142, 24210, 24213, 24363, 24661, 24703, 24722, 24754, 24786, 24916, 25192 and 25201 of 2016.**

W.P.No.18205 of 2014

% Dated 07-03-2017

G.Rama Mohan Rao & Anr.

.... Petitioners

v.

$ The Government of Andhra Pradesh, rep, by its Principal Secretary and Chairman, Agricutural, Marketing and Cooperative Department, Secretariat, Hyderabad & Anr.

.... Respondents

! **Counsel for petitioners**:

Sri M. Surendra Rao, Sri G. Vidyasagar and Sri K.G.Krishna Murthy, Learned Senior Counsel, Dr. K. Lakshmi Narasimha, Sri Vedula Srinivas, Sri O. Manohar Reddy, Sri J. Sudheer, Sri Subrahmanyam Kurella, Sri Srinivasa Rao Madiraju, Sri C. Subodh, Smt. M. Shalini, Sri A. Venkata Ramaiah, Sri Dadi Radha Krishna, Sri Ch.B.R.P. Sekhar, Sri G. Maloji Rao, Sri Karri Suryanarayana, Sri Kowturu Pavan Kumar, Sri Karri Murali Krishna, Sri M.Ramgopal Rao, Sri N.Pramod, Sri G.Vijaya Babu, Sri K.Chidambaram, Sri A. Bhaskara Chary, Mrs. K. Jayasree, Sri K. Vijayakumar Reddy, Sri D.Linga Rao, Sri K.S. Murthy, Sri Rama Rao Mavidi, Smt. K. Udaya Sri, Sri K.Raghuveer Reddy, Sri M.N. Narasimha Reddy, Sri P.C. Aravinda Babu,

Sri Nayakawadi Ramesh, Dr. Challa Srinivasa Reddy, Sri V. Padmanabha Rao, Sri E.V.V.S. Ravi Kumar, Sri M. Subba Reddy, Sri M.V. Hanumantha Rao, Sri Shaik Shakeel Ahmad, Sri M. Karthik Pavan Kumar, Sri K. Rammohan Mahadeva, Sri M.V. Raja Raam, Sri A. Rajendra Babu, Sri K.R. Srinivas and Sri V. Sudhakar Reddy.

^ **Counsel for respondents**:

Learned Advocate-General for the State of Andhra Pradesh, Sri B. Narayana Reddy, Learned Assistant Solicitor General, Sri Soma Harinath Reddy, Sri K. Satya Srinivasa Rao, Sri M. Ravindranath Reddy, Sri P. Sudhakar Reddy, Sri T. Sudhakar Reddy, Sri Nadakuditi Ravi Shankar, Sri B. Prakasam, Sri B. Thimothi, Sri Banda Prasada Rao, Sri K. Ramanuja Chari, Smt. A. Anasuya, Sri Mummaneni Srinivasa Rao, Mrs.A.Jayanthi, Sri T.Venkta Raju, Sri Uma Shankar Lokanadham, Sri Kalamata R.Babu, Sri K. Santhosh, Sri P. Roy Reddy, Sri Y. Sudhakar Reddy, Sri A. Yadava Reddy, Dr.P.B. Vijay Kumar, Sri P.V.V. Satyanarayana, Sri M. Papa Reddy, Sri Tadi Nageswara Rao, Smt. Jagarlamudi Koteswari Devi, Sri N. Siva Reddy, Sri N. Ravi Prasad, Sri V.T.M. Prasad, Sri Akula Anil Srinivas, Sri P. Subash, Sri J.S. Raju, Sri Gangula Ashok Kumar Reddy, Sri R. Radha Krishna Reddy, Sri A.K. Jaya Prakash Rao, Sri K.R. Raman, Sri K.C. Venkata Reddy, Smt. M. Siva Jyothi and Sri K. Indra Reddy, Learned Standing Counsel.

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> HEAD NOTE:

? Citations:

1) (1976) 2 SCC 502
2) AIR 1964 SC 1585
3) (1965) 1 SCR 829
4) (1997) 6 SCC 12
5) (1976) 4 SCC 750
6) (1998) 3 SCC 495
7) (1979) 3 SCC 165
8) AIR 1961 SC 276
9) AIR 1967 SC 1910
10) (1985) 3 SCC 398
11) (2016) 3 SCC 788
12) (2013) 5 SCC 1
13) (2008) 5 SCC 1
14) (1998) 3 SCC 495
15) (1989) 1 SCC 321
16) (1970) 1 SCC 108
17) (1977) 1 SCC 554
18) (2010) 13 SCC 586
19) AIR 1967 SC 1889
20) AIR 1956 SC 285
21) (1975) 1 SCC 264
22) (1984) 1 SCC 551
23) (1985) 1 SCC 345
24) (2004) 6 SCC 186
25) 1951 AC 737
26) (1970) 2 ALL.E.R 294
27) 1971 (1) WLR 1062

28) 1972 (2) WLR 537
29) AIR 1968 SC 647
30) 1901 AC 495
31) (2000) 4 SCC 640
32) (1981) 1 SCC 722
33) (2009) 5 SCC 694
34) (2011) 12 SCC 695 : (2012) 2 SCC (Civ) 791
35) (2002) 5 SCC 111
36) (1961) 2 SCR 931 : AIR 1961 SC 564
37) (2016) 10 SCC 77
38) (2008) 11 SCC 10
39) (1977) 4 SCC 441
40) (2003) 5 SCC 163
41) (1989) 3 SCC 448
42) (2014) 6 SCC 415
43) (1919) A.C. 533
44) (1988) 2 SCC 293
45) AIR 1962 SC 159
46) 1987 Supp SCC 350
47) (1976) 1 SCC 925
48) (1991) 1 SCC 86
49) (1981) 4 SCC 173
50) AIR 1967 SC 944
51) (2013) 16 SCC 82
52) AIR 1986 SC 1370
53) 1953 2 K.B. 113
54) 1958 SCR 533 = AIR 1957 SC 912
55) (2000) 7 SCC 372
56) AIR 1976 SC 263
57) (1976) 2 SCC 895, = AIR 1975 SC 2190
58) (1961) 2 SCR 679 = AIR 1961 SC 751
59) (2010) 13 SCC 98 : (2010) 4 SCC (Civ) 774
60) AIR 1952 SC 181
61) AIR 1965 SC 895
62) (1976(2) SCC 953
63) AIR 1980 SC 303
64) (2003) 3 SCC 433
65) (2003) 2 SCC 111
66) AIR 2004 SC 2036
67) (2009) 6 SCC 735
68) AIR 1962 SC 113
69) (2007) 3 SCC 184
70) (2006) 3 SCC 643
71) (2016) 6 SCC 635
72) AIR 1959 Bombay 363 (2)
73) ILR (1970) 2 Delhi 167
74) (2000) 7 SCC 339
75) (1981) 1 SCC 449
76) AIR 1964 SC 1486
77) (1950) KB 18
78) 1969(1) SCC 765
79) AIR 1999 SC 1734
80) (1970) 1 SCC 248
81) (1982) 1 SCC 125
82) (1981) 2 SCC 66
83) (1970) 1 SCC 67
84) (1981) 3 SCC 431
85) (1997) 5 SCC 170
86) (1997) 5 SCC 171
87) (1998) 5 SCC 91
88) (2003) 9 SCC 193
89) AIR 1953 SC 58
90) (1971) 1 SCC 85
91) AIR 1955 SC 830
92) 1963 AC 557
93) (1966) 1 QB 878
94) (2002) 3 SCC 533
95) (2011) 1 SCC 640
96) (2007) 8 SCC 418
97) 320 US 591, 602 (1944)
98) (1996) 5 SCC 268
99) (1980) 3 SCC 97
100) (2002) 2 SCC 333
101) 2004(2) ALD 599 (DB)

102) AIR 1998 SC 1703
103) (2000) 10 SCC 664
104) (1991) 3 SCC 11
105) (2011) 5 SCC 305
106) AIR 1969 SC 118
107) (1974) 1 SCC 19
108) AIR 1981 SC 561
109) (1999) 3 SCC 653
110) 1993 Supp (2) SCC 592
111) AIR 1985 SC 551
112) (2004) 1 SCC 592
113) (2013) 7 SCC 595
114) (1973) 1 SCC 461
115) (1960) 1 SCR 348 : AIR 1959 SC 1279
116) AIR 1965 SC 1567
117) 1985 Supp SCC 432
118) (1992) 1 SCC 489
119) (1999) 7 SCC 298
120) (2004) 4 SCC 714
121) (1985) 3 SCC 169
122) 1989 Supp (2) SCC 364
123) (2003) 7 SCC 546
124) (1995) 6 SCC 749
125) (1994) 4 SCC 448
126) 1995 Supp (2) SCC 731
127) 2008(5) ALT 115 (F.B)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition Nos.18205, 21660, 40864 of 2014; 10993, 15286, 16870, 17215, 17254, 17349, 18395, 18505, 18660, 18813, 19030, 19256, 20279, 22432, 22866, 24885, 24914, 24924, 25192, 25350, 26781, 27048, 27312, 27330, 33371, 39193, 41047, 41348, 41432, 42400 of 2015; 720, 727, 740, 796, 846, 918, 2292, 2828, 5071, 10476, 10620, 10670, 11120, 12468, 14344, 14668, 14679, 14750. 14916, 15204, 15361, 15518, 15548, 15717, 15741, 15893, 16313, 16453, 16774, 16821, 16834, 16925, 17422, 17426, 17489, 17845, 17847, 17852, 17865, 17876, 18057, 18138, 18525, 18539, 18627, 18640, 18706, 18736, 18757, 18789, 18791, 18792, 18798, 18815, 18817, 18945, 18993, 19161, 19162, 19172, 19239, 19246, 19320, 19983, 19990, 19993, 20038, 20045, 20060, 20077, 20228, 20275, 20379, 20381, 20452, 20495, 20814, 20815, 20836, 20845, 20849, 20876, 20898, 20989, 21127, 21132, 21135, 21287, 21315, 21437, 21584, 21638, 21675, 21678, 21757, 21808, 21826, 21833, 21836, 21847, 21875, 21890, 22054, 22112, 22174, 22206, 22282, 22449, 22505, 22544, 22587, 22590, 22634, 22891, 23376, 23380, 23503, 23505, 23515, 23540, 23602, 23684, 23780, 23808, 23861, 24029, 24062, 24122, 24142, 24210, 24213, 24363, 24661, 24703, 24722, 24754, 24786, 24916, 25192 and 25201 of 2016.

COMMON ORDER: (per Hon'ble the Acting Chief Justice Justice Ramesh Ranganathan)

In these batch of Writ Petitions the petitioners, who are all employees of Corporations/Companies/Societies/Institutions, listed in the IX and X Schedule of the A.P. Reorganisation Act, 2014 (the "2014 Central Act" for short), have invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, to declare the orders issued by the Government of Andhra Pradesh, in G.O.Ms. No.112 dated 18.06.2016 keeping in abeyance the earlier orders issued by them, enhancing the age of superannuation of employees of public sector undertakings under the administrative control of the Government from 58 to 60 years, till formulation of a policy regarding extension of the age of superannuation of such employees, as arbitrary and illegal. The

petitioners seek a declaration from this Court that they are entitled to continue in service till they attain the age of superannuation of 60 years.

The corporations/companies/societies, of which the petitioners are employees of, are categorized as (a) Corporations/ Companies listed under the IX schedule; (b) Societies/Cooperative Societies under the IX schedule; (c) other institutions in the IX schedule; (d) societies listed in the X schedule; and (e) other institutions listed in the X schedule.

(a) Companies and corporations listed under the IX schedule are:-

(1) A.P. Seeds Development Corporation (entry 1 of the IX schedule).

(2) AP State Agro Industries Development Corporation (entry 2 of the IX schedule)

(3) AP State Warehousing Corporation (entry 3 of the IX schedule).

(4) AP State Civil Supplies Corporation (entry 4 of the IX schedule).

(5) AP TRANSCO/GENCO (entry 6 of the IX schedule).

(6) New and Renewable Energy Development Corporation of AP (entry 8 of the IX schedule).

(7) AP Forest Development Corporation (entry 9 of the IX schedule)

(8) AP State Police Housing Corporation (entry 12 of the IX schedule).

(9) AP State Housing Corporation (entry 13 of the IX schedule).

(10) AP Mineral Development Corporation (entry 16 of the IX schedule).

(11) AP Industrial Infrastructure Corporation (entry 17 of the IX schedule).

(12) AP State Finance Corporation (entry 19 of the IX schedule).

(13) AP Handicrafts Development Corporation (entry 21 of the IX schedule).

(14) AP Trade Promotion Corporation (entry 22 of the IX schedule).

(15) AP State Irrigation Development Corporation (entry 23 of the IX schedule).

(16) AP State Minority Welfare Finance Corporation (entry 24 of the IX schedule).

(17) AP State Beverages Corporation (entry 25 of the IX schedule).

(18) AP Education And Welfare Infrastructure Development Corporation (entry 77 of the IX schedule).

(b) Societies/Co-operative Societies listed under the IX schedule are:-

(19) AP Co-Op Oil Seeds Growers Federation (entry 45 of the IX schedule).

(20) AP Women Co-Op Finance Corporation (entry 59 of the IX schedule).

(21) AP Defirmity Abled Senior Citizen Assistance Corporation (entry 60 of the IX schedule).

(22) AP Society for Training and Employment Promotion (entry 66 of the IX schedule).

(23) AP Girijan Co-Op Corporation (entry 75 of the IX schedule).

(24) AP Schedule Caste Co-operative Finance Corporation (entry 78 of the IX schedule).

(25) AP Backward Classes Co-Operative Finance Corporation (entry 79 of the IX schedule).

(iii) Other Institutions listed under the IX schedule are:-

(26) AP Khadi Village Industries Board (entry 51 of the IX schedule).

(iv) Societies listed under the X Schedule are:

(27) AP State Co-Op. Union Limited (entry 1 of the X schedule).

(28) Society for Elimination of Rural Poverty (entry 37 of the X schedule).

(29) AP Residential Education Institution Society (entry 41 of the X schedule).

(30) AP Social Welfare Residential Education Institution Society (entry 42 of the X schedule).

(31) AP Backward Classes Residential Education Institution Society (entry 48 of the X schedule).

(32)AP Tribal Welfare Residential Education Institution Society.

(v) Other Institutions listed under the X Schedule are:-

(33) Board of Intermediate Education (entry 19 of the X schedule).

(34) Telangana Social Welfare Board (entry 92 of the X schedule).

(35) AP Consumer Redressal Commission – Consumer Protection Act, 1986

(36) NTR University of Health Sciences – AP University of Health Sciences Act,1971.

It is wholly unnecessary for us, while considering the rival submissions of the Learned Senior Counsel and the Learned Counsel on either side, to burden this judgment with the facts and events leading upto the filing of each of these Writ Petitions. It would suffice, instead, to note the claim of the Employees Federation, representing the employees in most, if not all, the respondent-organisations, that, under the Articles of Association/ bye-laws of these legal entities, the Board of Directors/managing Committees are vested with the power to frame, and have been framing, rules/regulations regarding service conditions of employees working in their organisation; the Boards have been following Government norms, in framing service conditions of these employees, from time to time; there are specific provisions, in the Articles of Association of the PSUs, that any action or decision taken by the Directors, in the exercise of the powers vested in them under the Articles of Association, Memorandum of Association and the Companies Act shall prevail, and the shareholders in their general meeting cannot annul such decision of the Directors; Section 291 (2) of the Companies Act, 1956 may be referred to in this regard; though the Government, as the shareholder of the respective PSUs, is vested with the power to issue any directive, under the Articles of Association, to the

company in regard to any matter and, in such a case, the Directors of the company are bound to implement such directives, the Government is not entitled to invoke the said Article, in the Articles of Association, to alter, modify or annul the resolution of the Board of Directors proposing enhancement of the age of superannuation from (58) to (60) years to its employees; having delegated powers to the Board of Directors, under the Articles of Association, to frame service conditions for the employees working in the respective companies, the Government, as a shareholder, is not entitled to encroach and divest the Board of Directors of their power to frame service conditions of their employees; and, as the employees working in the PSUs are not its employees, the Government is not entitled to curtail the benefit, or deny the benefit, to employees working in the PSUs while acting as the shareholder of the company.

In his counter-affidavit dated 23.07.2016, the Special Secretary to the Government, Finance Department stated that the Government of Andhra Pradesh enhanced the age of superannuation of Government employees from 58 years to 60 years; the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 ("the 1984 Act" for short), was amended by the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 ("the 2014 State Act" for short); G.O.Ms. No.147 dated 30.06.2016 issued by the Finance Department applies only to Government employees; Employees associations of certain public sector undertakings, and institutions listed in the Ninth and Tenth Schedules of the 2014 Central Act, sought extension of the provisions of the 2014 State

Act to them also; the Finance Department issued certain guidelines on the applicability of the enhanced age of superannuation to employees of urban and rural local bodies, state public enterprises, autonomous institutions and other entities, and to the teaching and non-teaching staff of aided educational institutions and universities; and, in order to make the position clear, certain clarifications were issued vide Circular Memo. dated 02.07.2014.

The clarifications sought for, and the remarks furnished by the Finance Department thereto, are referred to in a tabular form in the counter-affidavit. In so far as employees of public sector undertakings are concerned, the clarification is to the effect that, as these employees have not as yet been apportioned between the two successor States of Telangana and Andhra Pradesh, they cannot be treated, as at present, as employees of the entities belonging to the successor State of Andhra Pradesh; and the enhanced age of superannuation cannot be made applicable mutatis mutandis to employees of public enterprises of the erstwhile composite State of Andhra Pradesh.

The counter-affidavit refers to receipt of proposals from the Andhra Pradesh State Irrigation Development Corporation Limited, Hyderabad, through the Water Resources Department, for extension of the enhanced age of superannuation to their employees, and notes that the Finance Department had concurred with the proposals subject to the following conditions: (a) these orders are applicable to employees who are allocated to the Andhra Pradesh unit by specific orders; (b) these orders shall come into effect from the date of final allocation of employees i.e., 02.06.2014 on condition that the period they were out of employment shall be

treated as extra-ordinary leave or any other eligible leave; and (c) necessary amendment shall be carried out to the regulations/bye-laws; and, consequently, orders were issued in G.O.Ms.No.101 dated 23.09.2015.

It is further stated that, when several proposals and requests were received from various Corporations without final allocation of employees and without approved demerger plans from various Corporations and Public Sector Undertakings, the Public Enterprises Department of the Government of A.P. had issued Memo. dated 26.11.2015 advising the Secretariat Departments, including the Water Resources Department, to keep the orders, enhancing the age of superannuation of employees of Public Sector Undertakings from 58 to 60 years, if any issued, in abeyance till orders, formulating the policy regarding extension of the age of superannuation, of employees of Public Sector Undertakings in the State, were issued; pursuant thereto, guidelines were issued vide Circular Memo dated 07.12.2015 directing the managements of Public Sector Undertakings and Institutions, included in the Ninth and Tenth Schedules of the 2014 Central Act, to take up the following process prior to submitting proposals to the Government for any change in the age of superannuation: (a) approval of the Government of Andhra Pradesh and the Government of Telangana for demerger of the institution following the due procedure; (b) reconstitution of the Board in accordance with the established procedure; (c) final allocation of employees between institutions of both the States; (d) the reconstituted Board passing a resolution, with due justification for enhancement of the age of superannuation, and sending the proposal to the Government for

approval; and (e) suitable amendment of the relevant provisions in the bye-laws.

It is also stated in the counter-affidavit that orders were issued by the Water Resources Department, vide G.O.Ms. No.2 dated 07.01.2016, keeping the orders issued in G.O.Ms. No.101 dated 23.09.2015 in abeyance; in the wake of re-organisation of the State, the existing boards/managements of these institutions are expected to only limit themselves to taking decisions on continuing day-to-day administration, and to facilitate division/ demerger; propriety demanded that the present Boards did not to venture into major policy decisions; with mounting litigation, orders were issued in G.O.Ms. No.112 dated 18.06.2016 that the enhanced age of superannuation cannot be made applicable to employees of Public Sector Undertakings, and institutions listed in the Ninth and Tenth Schedules of the 2014 Central Act, until the matter of division of assets and liabilities of institutions between the States of Andhra Pradesh and Telangana was settled, and allotment of employees between the two States was finalised for these public sector undertakings/institutions; the Government would be in a position to take a policy decision on the matter only after such a process is completed in all respects; orders issued, if any, by any department or public sector undertakings/institutions were to be kept in abeyance with immediate effect; the said G.O. is self-explanatory; the stand of the Government is that employees of the State Public Sector Undertakings, and other autonomous bodies, listed in the Ninth and Tenth Schedules of the 2014 Central Act, are not government employees; unless the rules governing the service conditions of these employees are suitably

amended, the enhanced age of superannuation does not automatically apply; unless the demerger of these institutions is completed with the approval of both the Governments, and employees of these organisations are finally allocated, the age of superannuation cannot be enhanced for the reason that only one State has enhanced the age of superannuation; the division of employees is so far ad-hoc, and is not supported by any guidelines or approval; as allocation of assets and liabilities is still not complete, the financial viability of the separated entity cannot be assessed at this juncture; and there is every possibility of a huge financial burden falling on the State Government.

Elaborate oral and written submissions were put forth by Sri M. Surendra Rao, Sri G. Vidyasagar and Sri K.G.Krishna Murthy, Learned Senior Counsel, Dr. K. Lakshmi Narasimha, Sri Vedula Srinivas, Sri O. Manohar Reddy, Sri J. Sudheer, Sri Subrahmanyam Kurella, Sri Srinivasa Rao Madiraju, Sri C. Subodh, Smt. M. Shalini, Sri A. Venkata Ramaiah, Sri Dadi Radha Krishna, Sri Ch.B.R.P. Sekhar, Sri G. Maloji Rao, Sri Karri Suryanarayana, Sri Kowturu Pavan Kumar, Sri Karri Murali Krishna, Sri M.Ramgopal Rao, Sri N.Pramod, Sri G.Vijaya Babu, Sri K.Chidambaram, Sri A. Bhaskara Chary, Mrs. K. Jayasree, Sri K. Vijayakumar Reddy, Sri D.Linga Rao, Sri K.S. Murthy, Sri Rama Rao Mavidi, Smt. K. Udaya Sri, Sri K.Raghuveer Reddy, Sri M.N. Narasimha Reddy, Sri P.C. Aravinda Babu, Sri Nayakawadi Ramesh, Dr. Challa Srinivasa Reddy, Sri V. Padmanabha Rao, Sri E.V.V.S. Ravi Kumar, Sri M. Subba Reddy, Sri M.V. Hanumantha Rao, Sri Shaik Shakeel Ahmad, Sri M. Karthik Pavan Kumar, Sri K. Rammohan Mahadeva, Sri M.V. Raja Raam, Sri A. Rajendra

Babu, Sri K.R. Srinivas and Sri V. Sudhakar Reddy, Learned Counsel appearing for the Writ Petitioners.

The Learned Advocate-General for the State of Andhra Pradesh, Sri B. Narayana Reddy, Learned Assistant Solicitor General, Sri Soma Harinath Reddy, Sri K. Satya Srinivasa Rao, Sri M. Ravindranath Reddy, Sri P. Sudhakar Reddy, Sri T. Sudhakar Reddy, Sri Nadakuditi Ravi Shankar, Sri B. Prakasam, Sri B. Thimothi, Sri Banda Prasada Rao, Sri K. Ramanuja Chari, Smt. A. Anasuya, Sri Mummaneni Srinivasa Rao, Mrs.A.Jayanthi, Sri T.Venkta Raju, Sri Uma Shankar Lokanadham, Sri Kalamata R.Babu, Sri K. Santhosh, Sri P. Roy Reddy, Sri Y. Sudhakar Reddy, Sri A. Yadava Reddy, Dr.P.B. Vijay Kumar, Sri P.V.V. Satyanarayana, Sri M. Papa Reddy, Sri Tadi Nageswara Rao, Smt. Jagarlamudi Koteswari Devi, Sri N. Siva Reddy, Sri N. Ravi Prasad, Sri V.T.M. Prasad, Sri Akula Anil Srinivas, Sri P. Subash, Sri J.S. Raju, Sri Gangula Ashok Kumar Reddy, Sri R. Radha Krishna Reddy, Sri A.K. Jaya Prakash Rao, Sri K.R. Raman, Sri K.C. Venkata Reddy, Smt. M. Siva Jyothi and Sri K. Indra Reddy, Learned Standing Counsel put forth their submissions on behalf of the respondent-Companies/Corporations/Societies. It is convenient to examine the elaborate submissions, urged by Learned Senior Counsel and Learned Counsel on either side, under different heads.

I. ARE EMPLOYEES OF STATE PUBLIC SECTOR UNDERTAKINGS COVERED BY THE A.P. PUBLIC EMPLOYMENT (REGULATION OF AGE OF SUPERANNUATION) ACT?

On the questions whether all the petitioners, who are working in State owned corporations/companies/Societies are entitled to continue upto the age of 60 years in terms of the A.P.

Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 (the "2014 State Act" for short), and whether they all fall under the category of "***persons holding public posts and in connections with the affairs of the State***", it is submitted, on behalf of the petitioners, that Companies/Corporations/Societies, whose employees have now invoked the jurisdiction of this Court, discharge public services and duties which, otherwise, the State would have performed; the age of superannuation of all employees in the State of AP is governed by the A.P. Employment (Regulation of Age of Superannuation) Act, 1984 (the "1984 Act" for short) as amended by the 2014 State Act; the State Government made the 1984 Act in the exercise of its powers under Entry 42 of List II of the VII Schedule to the Constitution which deals with "State Public Services"; the power to legislate under the Entry is wider than the power to make rules under the proviso to Article 309 of the Constitution; all the petitioners fall within the ambit of Section 1(2)(i) of the 1984 Act since all the Corporations, where they are employed, are State owned corporations; the definition of a "Government employee" in Section 2(3) of the 1984 Act is an inclusive definition; the very fact that Section 1(2)(iv) specifies officers/employees, whose conditions of service are regulated by rules framed under the proviso to Article 309 of the Constitution of India, would mean that Section 1(2)(i) applies to persons apart from those mentioned in clauses (ii) to (iv); employees of State Government public sector undertakings fall within the ambit of Section 1(2)(i) of the 1984 Act; a joint reading of Section 2(3) read with Section 1(2)(i) of the 1984 Act makes it clear that employees of these Corporations are Government employees; after bifurcation,

the State of A.P amended the 1984 Act on 27.06.2014 by the 2014 State Act; employees of these public sector undertakings, like other employees of the Government who hold posts in connection with the affairs of the State, are governed by the provisions of the 1984 Act as amended by the 2014 State Act; if statutory Corporations/State Public Sector undertakings are held to be excluded from the ambit of Section 1(2)(i), it would then render clause (iv) redundant as all persons appointed to public services and posts in connection with the affairs of the State would fall within the ambit of clause (iv) of Section 1(2); the petitioners, all of whom are Government employees, are entitled to continue in service till they attain the age of 60 years irrespective of whether or not these Corporations have incorporated the said age into their regulations; both the 1984 and the 2014 State Acts have over-riding effect; the meaning given earlier to the words "government employee", either under the Companies Act or under the Societies Act or any other enactment, confining/restricting such meaning, cannot be applied to the provisions of these Acts; both these Acts apply to persons employed by the State and those employed in State owned Corporations/Companies etc; employees of these Corporations have been distributed between the States of A.P. and Telangana, and the requirement of Section 82 has been complied with; an executive order, in the form of GOMS No. 112, cannot override plenary legislation i.e. the 1984 Act; the Government cannot discriminate between employees of the PSUs, and its employees, regarding service conditions since all PSUs are fully owned by the State, and are all instrumentalities of the State; what is to be done by the State is being done through another juristic

person created, owned and controlled by the Government; there is no difference between employees of the State and employees of PSUs regarding service conditions; whatever reasons prompted the State to enhance the age of retirement of its employees, should be applied in enhancing the age of retirement of employees of PSUs also; the Government cannot adopt different yardsticks in prescribing the age of retirement, more beneficial to its employees and less beneficial to employees of PSUs; G.O. Ms.No 147 was issued by the Government giving instructions regarding applicability of the 2014 State Act; statutory Corporations have adopted, and have all the while been following the G.O's and instructions issued by the Govt. from time to time; as they have adopted the 1984 Act, the subsequent amendments brought to the said Act should be automatically applied; the provisions of the 2014 State Act, irrespective of their adoption, are deemed to be applicable; and employees of Corporations are entitled to continue in service till they attain the age of 60 years.

On the other hand, the Learned Advocate General for the State of A.P. would submit that Section 2 (1) of the 1984 Act, as amended by the 2014 State Act, is inapplicable to employees of Schedule IX and X Institutions; the petitioners do not fit into the description of Government employees; they are a separate and distinct class, governed by separate service regulations; their retirement is guided by the respective service regulations of the entity; as on date, all of them are to retire on attaining the age of superannuation of 58 years; Law/Rules, framed in the exercise of the powers conferred under Articles 309 of the Constitution of India, are not applicable to employees of PSUs; in none of the cases

have the petitioners been able to demonstrate that their service regulations are amended duly following the prescribed procedure; moreover, in the absence of validly constituted Boards, the Adhoc Boards, created by the State Government for the purpose of managing service delivery, are incompetent to amend the service regulations/rules; these Boards are created pursuant to the Memo dated 29.5.2014, prior to the Appointed Day, for managing the service delivery of these Schedule IX and X Institutions; the respondent-Corporations are not Government Departments; the identity of a government company remains distinct from the Government; a government company is not identified with the State Government, but has been placed under a special system of control and is conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act, 1956; merely because the entire share-capital is held by the Government would not make the incorporated company the Government; employees of government companies are not civil servants, and are not entitled to the protection afforded by Article 311 of the Constitution; employees of government companies have no legal right to claim that the Government should pay their salary, or that the additional expenditure incurred on account of their enhanced age of retirement, should be met by the Government; the mere fact that a corporate body or a cooperative society answers the definition of a "State" does not make it the "State Government", nor will employees of such a body become holders of civil posts or employees of the State Government; even if the Corporation/Company/Society is held to be a "State", for the purposes of Article 12, it is an independent juristic entity and

cannot be identified with, or treated as, the State Government; all Schedule IX and X Institutions are separate and distinct entities covered by the provisions of the 2014 Central Act; and employees of these entities cannot equate themselves with regular State Government employees.

It is contended, on behalf of some of the petitioners, that public sector companies, registered under the Companies Act, are different from the State Government; the State Government cannot act as if it is the owner of the company or as an employer of the employees of the company; and the company is the master of its affairs, and also the employer in so far as its employees are concerned.

Entry 42 of List II of the VII Schedule to the Constitution confers power on the State legislature to make laws in relation to State Public Services, apart from the power conferred on the State Government to make rules under the proviso to Article 309 of the Constitution. It is primarily the State legislature in whom power to make laws regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested. Entry 41 of List II of the Seventh Schedule confers power, without any fetter, to legislate for State public services. (**N. Lakshmana Rao v. State of Karnataka**[1]; **Gurdev Singh Sidhu v. State of Punjab**[2]). An Entry, in the Lists of the Seventh Schedule to the Constitution, cannot be read in a narrow or restricted sense, and each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it (**Navin-**

[1] (1976) 2 SCC 502
[2] AIR 1964 SC 1585

chandra Mafatlal v. The Commissioner of Income-tax, Bombay city[3]; **R.S. Rekhchand Mohota Spinning & Weaving Mills Ltd. v. State of Maharashtra**[4]; **I.N.Saksena v. State of M.P**[5]), and the words in Entries in the three Lists should be given their ordinary, natural and grammatical meaning subject to the rider that the most liberal construction should be put upon it to have effect in their widest amplitude. (**R.S. Rekhchand Mohota Spinning & Weaving Mills Ltd.**[4]; **Navinchandra Mafatlal**[3]). The scope of Entry 41 of List II must, therefore, be held to be wider than matters regulating the recruitment and conditions of service of public servants under the proviso to Article 309. (**I.N. Saksena**[5]). While the legislative field, indicated in Article 309, is the same as is indicated in Entry 41 of List II of the VII Schedule, the proviso to Article 309, which gives power to the Governor to make Service Rules, is only a transitional provision as the power under the proviso can be exercised only so long as the legislature does not make a law whereby recruitment to public posts, as also other conditions of service relating to that post, are laid down. (**A.B. Krishna v. State of Karnataka**[6]).

It is the exclusive power of the States to deal with their services either in the exercise of their legislative functions or rule-making powers or, in the absence of any law or rules, in the exercise of their executive power under Article 162 of the Constitution, which is co-extensive with their legislative powers to regulate recruitment and conditions of service. (**Swaran Lata v.**

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[3] (1965) 1 SCR 829
[4] (1997) 6 SCC 12
[5] (1976) 4 SCC 750
[6] (1998) 3 SCC 495

Union of India[7]). There is nothing in the terms of Article 309 of the Constitution which abridges the power of the Executive to act under Article 162 of the Constitution without a law. (**Swaran Lata**[7]; **T. Cajee v. U. Jormanik Siem**[8]; and **Sant Ram Sharma v. State of Rajasthan**[9]).

The 1984 Act is an Act, made by the A.P. State Legislature, to regulate the age of superannuation of persons appointed to public services and posts in connection with the affairs of the State of Andhra Pradesh. Section 1(2) thereof stipulates that the 1984 Act shall apply to (i) persons appointed to public services and posts in connection with the affairs of the State; (ii) officers and other employees working in any local authority, whose salaries and allowances are paid out of the Consolidated Fund of the State; (iii) persons appointed to the Secretariat staff of the House of the State Legislature; and (iv) every other officer or employee whose conditions of service are regulated by rules framed under the proviso to Article 309 of the Constitution of India immediately before the commencement of the 1984 Act.

Section 2(2) of the 1984 Act defines "Government" to mean the Government of Andhra Pradesh. Section 2(3) defines "Government employee" to include all categories of officers and employees referred to in Section 1(2). Section 2(6) defines "local authority" to mean, in relation to a local area comprised within the jurisdiction of a Municipal Corporation, the concerned Municipal Corporation; and, in relation to any other local area, the concerned Municipal Council, Zilla Parishad, Panchayat Samithi or Gram

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[7] (1979) 3 SCC 165
[8] AIR 1961 SC 276
[9] AIR 1967 SC 1910

Panchayat. Section 3 prescribes the age of superannuation and, under sub-section (1) thereof, every Government employee, not being a workman and not belonging to the Last Grade Service, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Section 3(1A), introduced by Act 26 of 1998, stipulates that, notwithstanding anything contained in sub-section (1), every member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. Section 4 stipulates that the provisions of the 1984 Act shall have effect notwithstanding anything contained in any rule or order of the Government for the time being in force.

The 1984 Act was amended by the 2014 State Act which came into force with effect from 02.06.2014, and Section 2(1) of the 1984 Act was substituted. Section 2(1), after its substitution, stipulates that every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. Section 3A was inserted to the 2014 State Act and, under sub-section (1) thereof, a Government employee belonging to the state cadre/multi-zonal cadre and who, by general or specific order issued by the Government of India under Section 77(1) of the 2014 Central Act is serving provisionally in connection with the affairs of the State of Telangana shall, on his final allotment to the State of Andhra Pradesh, be deemed to be continuously serving in the State of Andhra Pradesh.

While Section 3A of the 2014 State Act specifically refers to Government employees belonging to the state cadre/multi-zonal

cadre, employees of wholly owned State Government Public Sector Undertakings/Corporations/Societies do not belong either to the state cadre or to the multi-zonal cadre in terms of the Presidential Order made under Article 371-D of the Constitution of India. Section 3A has, therefore, no application to these employees. Clause (iv) of Section 1(2) of the 1984 Act relates to every other officer or employee i.e. officers or employees who do not fall within the ambit of clauses (i) to (iii), but whose service conditions are regulated by rules made under the proviso to Article 309 of the Constitution of India.

The contention, urged on behalf of the petitioners, is that, since clause (iv) of Section 1(2) of the 1984 Act relates to every other officer or employee whose conditions of service are regulated by rules made under the proviso to Article 309 of the Constitution of India, clause (i) of Section 1(2), which relates to persons appointed to public services and posts in connection with the affairs of the State, can only mean officers or employees appointed to public services and posts in connection with the affairs of the State, but whose conditions of service are not regulated by rules made under the proviso to Article 309 of the Constitution of India. It is necessary, therefore, to examine who are "***persons appointed to public services and posts in connection with the affairs of the State***", and whether such persons would include employees of wholly owned State Government Companies/Corporations/Societies also.

(a) CAN EMPLOYEES OF PUBLIC SECTOR UNDERTAKINGS BE SAID TO BE PERSONS APPOINTED TO PUBLIC SERVICES AND POSTS IN CONNECTION WITH THE AFFAIRS OF THE STATE:

While the Legislature enact laws, and lay down the mode in which such policies are to be carried out and the object of the

legislation achieved, the task of efficiently and effectively implementing these policies and enactments, rests with the civil services. Government servants are paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes. Those who are paid by the public, and are charged with public administration for public good must therefore, in their turn, bring to the discharge of their duties a sense of responsibility. The efficiency of public administration does not depend only upon the top echelons of these services. It depends as much upon all the other members of such services, even on those in the most subordinate posts. (**Union of India v. Tulsiram Patel**[10]).

Civil servants, i.e. persons who are members of a civil service of the Union of India or an all-India service or a civil service of a State or who hold a civil post under the Union or a State, occupy in law a special position. (**Tulsiram Patel**[10]). The expression "public servant", can be reasonably understood, with reference to the office and the duties performed in connection therewith, to be of a public character. (**CBI v. Ramesh Gelli**[11]). A government servant is, subject to the special provisions, governed by the law of master and servant. (**State of Punjab v. Salil Sabhlok**[12]). In contracts as those of service, the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status, in so far as the law itself has seen fit to attach to this relationship compulsory incidents. (**Salmond and Williams on Contracts; P. Venugopal v. Union of India**[13]).

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[10] (1985) 3 SCC 398
[11] (2016) 3 SCC 788
[12] (2013) 5 SCC 1
[13] (2008) 5 SCC 1

Provisions, with respect to services under the Union and the States, are made in Part XIV of the Constitution of India. This Part consists of two Chapters, Chapter I dealing with services and Chapter II dealing with Public Service Commissions for the Union and the States. The provisions, with respect to civil services in the Government of India Act, 1935, were taken as the basis for Chapter I of Part XIV of the Constitution. Article 309 provides for recruitment and conditions of service of persons serving the Union or a State, Article 310 for the tenure of office of such persons, and Article 311 for the mode of dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. The functions of the civil service in India, under Article 309 of the Constitution, are performed not only by persons employed in a civil capacity, but by persons appointed to public services and posts in connection with the affairs of the Union or any State by authorities appointed under or specified in Acts made under Article 309 or rules made under such Acts or under the proviso to that Article. (**Tulsiram Patel**[10]).

The rule-making function under the proviso to Article 309 is a legislative function. Since Article 309 has to operate subject to the other provisions of the Constitution, whether it is an Act made by the State Legislature which lays down the conditions of service, or it is a rule made by the Governor under the proviso to that Article, it should be in conformity with the other provisions of the Constitution. (**A.B. Krishna v. State of Karnataka**[14]). Article 309 makes no provision for recruitment or conditions of service of government servants but confers power upon the appropriate

[14] (1998) 3 SCC 495

Legislature to make laws, and upon the Governor of a State to make rules in respect of these matters. (**Tulsiram Patel**[10]). On the plain language of Article 309, any rule framed thereunder should be confined to recruitment and conditions of service of persons mentioned therein (**State of Punjab v. Kailash Nath**[15]).

The expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters like pension etc. (**Kailash Nath**[15]; **Tulsiram Patel**[10]; **State of M.P. v. Shardul Singh**[16]; **I.N. Subba Reddy v. Andhra University**[17]). What falls within the purview of the term "conditions of service" may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings. (**Kailash Nath**[15]). Article 309 confers legislative power to provide conditions of service including prescription of the age of superannuation. (**N. Lakshmana Rao**[1]; **P. Venugopal**[13]).

The phrase "Subject to the provisions of this Constitution" which precedes and qualifies the power conferred by Article 309, is significantly different from the qualifying phrase in Article 310(1) which is "except as expressly provided by this Constitution". (**Tulsiram Patel**[10]). A clear distinction has been drawn by the

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[15] (1989) 1 SCC 321
[16] (1970) 1 SCC 108
[17] (1977) 1 SCC 554

framers of our Constitution between service under the States and services in institutions which are creations of the Constitution itself. Article 315 of the Constitution, which commands that there shall be a Public Service Commission, is not linked with the All India Services contemplated under Article 312 of the Constitution to which, in fact, the selections are to be made by the Commission. (**Salil Sabhlok**[12]; **Mehar Singh Saini, In re**[18]).

While the origin of government service is contractual, a government servant acquires a status on his appointment to a post or office. His rights and obligations are no longer determined by consent of both the parties, but by statute or rules which may be framed and altered unilaterally by the Government. The legal relationship is one of status. Status is a condition for membership of a group, the powers and duties of which are exclusively determined by law. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law. The emolument of the government servant, and his terms of service, are governed by the statute or rules which may be unilaterally altered by the Government without his consent. (**P. Venugopal**[13]; **Tulsiram Patel**[10]; **Roshan Lal Tandon v. Union of India**[19]).

It is not in dispute that the service conditions of officers and employees of wholly owned State Government Public Sector undertakings, (Corporations, Companies or Societies), are not governed by rules made under the proviso to Article 309 of the Constitution of India. Such employees do not, therefore, fall within the ambit of clause (iv) of Section 1(2) of the 1984 Act. As they do

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[18] (2010) 13 SCC 586
[19] AIR 1967 SC 1889

not, admittedly, fall under clauses (ii) and (iii) of Section 1(2), it is only if they fall under clause (i) of Section 1(2) of the 1984 Act, and are held to be "persons appointed to public services and posts in connection with the affairs of the State", can they be held to be "Government employees" as defined in Section 2(3) of the 1984 Act, and it is only then would they be entitled to claim the benefit of the age of superannuation of 60 years under Section 3 of the 2014 State Act.

The words "public services" and "posts in connection with the affairs of the State" are expressions used in Article 309 of the Constitution of India which stipulates that, subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The word "service" in the proviso to Article 309 is the "public service" referred to in Article 309 itself. The expression "posts in connection with the affairs of the Union or of any State" is also to be found in the proviso to Article 309 of the Constitution of India. The phrase "persons serving under the Government of a State" refers to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or of the Governor. The salaries of these persons are paid out of State funds. The salaries, allowances and pension payable to such officers and employees are chargeable upon the Consolidated Fund of a State. The item relating to such administrative expenses forms part of the annual financial statement to be presented to the State Legislative Assembly, and

estimates thereof form the subject-matter of discussion in the Legislature. Such persons are taken *"to hold posts in connection with the affairs of the State and to be members of the civil service of the State"*. (**Pradyat Kumar Bose v. Chief Justice of Calcutta High Court**[20]).

While the service conditions of persons, appointed to public services and posts in connection with the affairs of the State are, ordinarily, governed by rules made under the proviso to Article 309 of the Constitution of India, clause (iv) of Section 1(2) ensures that even those persons, apart from the persons appointed to public services and posts in connection with the affairs of the State as referred to in clause (i), are also brought within the ambit of the 1984 Act provided their services are regulated by rules made under the proviso to Article 309 of the Constitution of India. All officers and employees, falling within the ambit of clause (i) of Section 1(2) of the 1984 Act, would fall within the ambit of clause (iv) also. Clause (iv) of Section 1(2) of the 1984 Act ensures that even those persons, who do not fall within the ambit of clause (i), are also brought within the ambit of the 1984 Act provided their service conditions are governed by the rules made under the proviso to Article 309 of the Constitution. Employees of Public Sector Undertakings are neither persons holding posts in connection with the affairs of the State nor are they members of the civil service of the State. As they are also not governed by the rules made under the proviso to Article 309 of the Constitution of India, they do not fall within the ambit of clauses (i) to (iv) of Section 1(2), and are

[20] AIR 1956 SC 285

therefore not governed by the provisions of the 1984 Act as amended by the 2014 State Act.

Let us now examine the judgments relied on behalf of the petitioners. In **Divya Prakash v. Kultar Chand Rana**[21], the first respondent was elected to the Himachal Pradesh State Legislative Assembly. An election petition was filed by the appellant, a voter in the Constituency, contending that, at the time of filing the nominations, the first respondent was holding an office of profit under the Government of Himachal Pradesh; and, as such, was disqualified under Article 191 (1)(a) of the Constitution. The observations of the Supreme Court, in **Divya Prakash**[21], were made in the context of whether or not the first respondent held an office of profit under the Government of Himachal Pradesh, and it was held that the test for deciding whether a person held an office of profit was whether he could sue for, or otherwise claim, the scale of pay fixed by the resolution of the Himachal Pradesh Board of School Education; in the light of his order of appointment, such a claim would not be upheld; and the first respondent was not holding an office of profit at the time when he filed his nomination or when he was elected.

In **Biharilal Dobray v. Roshn Lal Dobray**[22], a similar question whether an assistant teacher in a Basic Primary School run by the Uttar Pradesh Board of Basic Education, constituted under the Uttar Pradesh Basic Education Act, 1972, was disqualified from being chosen as a member of the State Legislative Assembly, under Article 191(1)(a) of the Constitution, arose for consideration. Following its earlier judgment in **Divya Prakash**[21],

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[21] (1975) 1 SCC 264
[22] (1984) 1 SCC 551

the Supreme Court held that the Uttar Pradesh Board of Basic Education was not an authority which was truly independent of the Government; every employee of the Board was, in fact, holding his office under the Government; subordination of the Board and its employees to the Government was writ large on the face of the Uttar Pradesh Basic Education Act, 1972, and the rules made thereunder; and the person who contested the election held an office of profit under the State Government, and his nomination was rightly rejected.

The observations of the Supreme Court, in the aforesaid judgments, were made while examining the question whether a person, who stood for elections to the State Legislative Assembly, held an office of profit resulting in his being disqualified for election under Article 191(1)(a) of the Constitution of India. The aforesaid judgments cannot be read out of context to hold that employees of all Public Sector Undertakings are employees of the State Government. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute, and that too taken out of their context. (**Amar Nath Om Prakash v. State of Punjab**[23]; **CCE v. Alnoori Tobacco Products**[24]; **London Graving Dock Co. Ltd. v. Horton**[25]; **Home Office v. Dorset Yacht Co.**[26]; **Shepherd Homes Ltd. v. Sandham**[27] **British Railways Board v. Herrington**[28]). The decision of a Court is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically

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[23] (1985) 1 SCC 345
[24] (2004) 6 SCC 186
[25] 1951 AC 737
[26] (1970) 2 ALL.E.R 294
[27] 1971 (1) WLR 1062
[28] 1972 (2) WLR 537

follows from the various observations made in it. (**State of Orissa v. Sudhansu Sekhar Mistra Hegde**[29]; **Quinn v. Leathem**[30]).

In **State of Bihar v. Bal Mukund Sah**[31] among the questions which arose consideration before the Supreme Court, was whether the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991, on its express language, covered the "Judicial Service" of Bihar State. The Supreme Court, by a majority, dismissed the appeals subject to certain modifications of the directions issued by the High Court. In his dissenting opinion, Justice R.P. Sethi observed that "Public service" meant anything done for the service of the public in any part of the country in relation to the affairs of the Union or the State; it was the opposite of private service; persons connected with the discharge of public duties, relating to any of the organs of the State i.e. Executive, Judiciary and Legislature including the armed forces, would be termed as "public servants" engaged in the service of the public; public services and posts in connection with the affairs of the Union or of any State would refer to all services and posts under the Union and the State, and include every commissioned officer in the military, naval or air force, every Judge, every officer of a court of justice, a member of the panchayat, every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court of justice; every person who holds any office by virtue of which he is empowered to place or keep any person in confinement; every officer of the Government whose duty it is, as

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[29] AIR 1968 SC 647
[30] 1901 AC 495
[31] (2000) 4 SCC 640

such officer, to prevent offences, to give information of offences, to bring offenders to justice or to protect the public health, safety or convenience; every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey assessment or contract on behalf of the Government; every officer who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government; or such person in the pay of a local authority, a corporation established by or under a Central or State Act, and the like.

Justice R.P. Sethi further opined that Section 21 of the Indian Penal Code may be an indicator to refer to the public services and posts intended to be covered or contemplated under Article 309 of the Constitution; Judicial Service, therefore, cannot be termed not to be a service within the meaning of Article 309; the appointment of a District Judge under Article 233 was appointment to public services within the meaning of Article 309 of the Constitution; though the Constitutional scheme envisaged an independent Judiciary not being under the Executive, but such an independent Judiciary could not be termed to be a creation of a distinct service in the State not being subject to the law-making sovereign powers of the Legislature; Article 309 is itself subject to the other provisions of the Constitution which guarantee independence of the Judiciary; the power of appointment of District Judges is vested in the Governor subject to the conditions

imposed under Article 233 of the Constitution; and it followed that, subject to the other provisions of the Constitution, the appropriate Legislature could regulate the recruitment and conditions of service of all persons appointed to public services including Judicial Services, and posts in connection with the affairs of the Union or of the State.

Reliance placed on the minority opinion in **Bal Mukund Sah**[31], to contend that employees of Public Sector Undertakings are appointed to public services, is misplaced. Not only does a minority opinion not constitute a declaration of law by the Supreme Court binding on the High Court under Article 141 of the Constitution, the aforesaid observations in the minority opinion were made while examining whether "judicial service" was a service within the meaning of Article 309 of the Constitution. Stray observations in a judgment, that too in a minority opinion, cannot be read out of context or be understood as a declaration of law binding on the High Court under Article 141 of the Constitution of India.

It is unnecessary for us, in the present writ proceedings, to examine whether or not the power to make laws under Entry 42 of List II of the VII Schedule would extend to employees of public sector undertakings, since we have already held that the 1984 Act, as amended by the 2014 State Act, does not relate to employees of public sector undertakings. It is only if the 1984 and the 2014 State Act are held applicable to employees of public sector undertakings, can it be held that they are entitled to continue in service till they reach the age of superannuation of 60 years. As employees of public sector undertakings are not "***persons appointed to***

public services and posts in connection with the affairs of the State", they are not governed by the provisions of the 1984 Act as amended by the 2014 State Act. While it is open to the Board of Directors/ Managing Committees of each of these Corporations/Companies/ Societies, in accordance with the provisions of the enactment by which they are governed and the Articles of Association/bye-laws which are applicable to them, to adopt the provisions of the 1984 Act and the 2014 State Act, and make them applicable to their employees by amending their rules and regulations, it is only thereafter can employees of these undertakings claim the right to continue in service upto the enhanced age of superannuation of 60 years.

(b) MERELY BECAUSE PUBLIC SECTOR UNDERTAKINGS ARE INSTRUMENTALITIES OF THE STATE UNDER ARTICLE DOES NOT MAKE ITS EMPLOYEES GOVERNMENT SERVANTS:

While a Public Sector Undertaking is a distinct juristic entity with a corporate structure of its own and carries on its functions on business principles with a certain amount of autonomy, behind the formal ownership is the deeply pervasive presence of the Government which acts through the instrumentality or agency of the corporation. Such a Corporation would, therefore, not be free from its basic obligation to obey the fundamental rights, and the Court must not allow enforcement of fundamental rights to be frustrated by taking the view that it is not the Government and, therefore, not subject to constitutional limitations. (**Ajay Hasia v. Khalid Mujib Sehravardi**[32]). The mere fact that a Corporate body, or a Cooperative Society, answers the definition of "State" under Article 12 does not make it the "State Government", nor will the

[32] (1981) 1 SCC 722

employees of such a body become holders of civil posts or employees of the State Government. While such Corporations/Societies may answer the definition of a "State", that does not mean that the State Government is liable to bear and pay the salaries of its employees, as it is an independent juristic entity, and cannot be identified with or treated as the State Government. (**State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha**[33]). While a Company/Corporation may be called an "agency" or an "instrumentality" of the Central/State Government for the limited purpose of labelling it a "State" within the meaning of Article 12 of the Constitution, a Corporation cannot also be held to be an "agent" of the Central/State Government under Section 182 of the Contract Act. (**National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad**[34]; **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**[35]).

Unlike Part III of the Constitution, service provisions in Part-XIV of the Constitution relate to recruitment, conditions and tenure of service of persons, citizens or otherwise, appointed to a Civil Service or to posts in connection with the affairs of the Union or any State. The word "State" has a different connotation in Part III relating to Fundamental Rights. It includes the Government and Parliament of India, the Government and Legislature of each of the States and all local or other authorities within the territory of India, etc. The scope and ambit of the Service provisions are to a large extent distinct and different from the scope and ambit of the fundamental right, guaranteeing to all citizens, an equality of

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[33] (2009) 5 SCC 694
[34] (2011) 12 SCC 695 : (2012) 2 SCC (Civ) 791
[35] (2002) 5 SCC 111

opportunity in matters of public employment. It would be wrong in principle to either cut down or expand the amplitude of a fundamental right by reference to provisions which have an altogether different scope and purpose. (**Gazula Dasaratha Rama Rao v. State of A.P.,**[36]). While Public Sector Undertakings are, no doubt, instrumentalities of the State under Article 12 of the Constitution and are governed by Part-III of the Constitution of India, that does not make employees, of these corporate bodies, Government employees.

Corporate bodies are independent entities, and their employees cannot claim parity with employees of the State Government. The State Government has a master-servant relationship with the civil servants of the State, whilst it has no such direct or indirect nexus with employees of corporate bodies. The State Government may legitimately choose to extend different rights in terms of pay-scales and retiral benefits to civil servants. It may disagree to extend the same benefits to employees of corporate bodies. The State Government would be well within its right, to deny similar benefits to employees of corporate bodies, which are financially unviable, or if their activities have resulted in financial losses. When pay-scales are periodically reviewed for civil servants, they do not automatically become applicable to employees of corporate bodies, which are wholly financed by the Government, and similarly not even to employees of Government companies. Likewise, there cannot be parity with Government employees, in

[36] (1961) 2 SCR 931 : AIR 1961 SC 564

respect of allowances. So also, of retiral benefits. (**State of H.P. v. Rajesh Chander Sood**[37]).

Employees governed by the terms of a contract do not possess the status of government servants. Neither are they governed by the Rules framed under Article 309 of the Constitution, nor do they enjoy the protection under Article 311. (**UPSC v. Dr. Jamuna Kurup**[38]; **Roshan Lal Tandon**[19]; **Dinesh Chandra Sangma v. State of Assam**[39]). Employees of statutory bodies are governed by statutory rules, and do not enjoy the status of government servants. (**Dr. Jamuna Kurup**[38]). Employees of government companies are not civil servants. Such employees have no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. Being employees of the Companies, it is the responsibility of the Companies concerned to pay them salary and, if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance pay scales, its employees cannot claim any legal right against, or seek a direction to, the State Government to meet the additional expenditure required to be incurred on account of revision of pay scales. (**A.K. Bindal v. Union of India**[40]; **Pyare Lal Sharma v. Managing Director**[41]).

As employees of Public Sector Undertakings and Government servants constitute two different and distinct classes, neither do the conditions of service prescribed for government servants automatically apply to employees of Public Sector Undertakings,

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[37] (2016) 10 SCC 77
[38] (2008) 11 SCC 10
[39] (1977) 4 SCC 441
[40] (2003) 5 SCC 163
[41] (1989) 3 SCC 448

nor does the plea of discrimination, or of violation of Article 14, merit acceptance. The contention that the Government cannot apply different yardsticks is therefore not tenable. While several of these corporate bodies appear to have adopted the 1984 Act, they are required to also adopt the 2014 State Act, and amend the rules and bye-laws, governing the age of superannuation of its employees, accordingly. It is only if the rules, governing the age of superannuation, are amended as prescribed under the applicable bye-laws/Articles of association would the employees of these corporate bodies then be entitled to claim the benefit of the enhanced age of superannuation.

II. DOES THE LETTER OF STATE GOVERNMENT DATED 01.09.1984, MAKING THE 1984 ACT APPLICABLE TO COMPANIES AND CORPORATIONS, APPLY TO THE 2014 STATE ACT ALSO?

It is contended, on behalf of the petitioners, that the State Government, vide letter dated 01.09.1984, had specified that the 1984 Act, and Ordinance No. 24 of 1984 which later became Act No. 3 of 1985, were *Mutatis Mutandis* applicable to employees and officers of public enterprises in the State; therefore, the 2014 State Act would also apply to State Public Sector Employees, more so in view of Section 2(f) r/w 100 of the 2014 Act; as held by the Supreme Court, in **State of Rajasthan v. C.P. Singh**[42], an employee cannot be deprived of the benefits of the enhanced age of retirement on account of the amendments made in the Regulations subsequent to the States Reorganization; and, consequent to the reorganization of the State, employees of State Public Enterprises in the State of Andhra Pradesh are entitled to the benefit of the enhanced age of superannuation of 60 years.

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[42] (2014) 6 SCC 415

The Companies/Corporations/Societies, listed in the IX Schedule to the 2014 Central Act, are distinct legal entities and are neither departments, nor form part, of the State Government. The Board of Directors/Managing Committees of each of these legal entities govern each of these entities subject only to the provisions of the Companies Act, the Memorandum of Association and the Articles of Association in so far as Companies/Corporations are concerned, and the bye-laws and the provisions of the Act whereunder the Societies were constituted in so far as Societies are concerned. The control exercised by the State Government, over such Companies/Societies, is as its shareholder, and in terms of the relevant enactments and the Articles of Association of each of these Companies, and the bye-laws of each of these Societies. Neither the 1984 Act, nor the Rules made by the Government for its employees under the proviso to Article 309 of the Constitution of India, automatically apply to these Corporations/Companies/ Societies.

The letter dated 01.09.1984 was addressed by the Director General, Public Enterprises Management Board and Ex-Officio Secretary to the Government, to the Vice-Chairmen and Managing Directors of all Public Sector Enterprises, informing them that, in Ordinance No.24 of 1984 dated 23.08.1984, the age of retirement of Government employees was raised from 55 years to 58 years w.e.f. 23.08.1984; the above orders were mutatis-mutandis applicable to employees of all Public Enterprises in the State; and necessary action may be taken in the matter.

Contemporanea expositio est optima et fortissima in lege is a maxim meaning “Contemporaneous exposition is the best and

strongest in the law." (**Black L. Dict.; Broom**.). Where the words of an instrument are ambiguous, the Court may call in aid acts done under it as a clue to the intention. (**Watcham v. Attorney General of the East Africa Protectorate**[43]). *Contemporanea expositio* is a well settled principle or doctrine which applies only to the construction of ambiguous language in old statutes (**Baktawar Singh Bal Kishan v. Union of India**[44]), but not in interpreting Acts which are comparatively modern. (**Senior Electric Inspector v. Laxmi Narayan Chopra**[45]*;* **J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India**[46]). The understanding of the Executive regarding the interpretation of a statutory provision does not bind the Court. Even if persons who dealt with the statute understood its provisions in another sense, such mistaken construction of the statute does not bind the Court so as to prevent it from giving it its true construction. (**Workmen v. National & Grindlays Bank Ltd.,**[47]; **Punjab Traders v. State of Punjab**[48]). The rule of construction, by reference to *contemporanea exposition,* must give way where the language of the Statute is plain and unambiguous. (**K.P. Varghese v. ITO**[49]).

The aforesaid letter dated 01.09.1984 does not even constitute executive instructions under Article 154 read with Article 162 of the Constitution of India, and is merely in the nature of internal correspondence between the parties thereto, and confers no right on employees of Public Sector Undertakings. Reliance placed thereupon, to contend that the petitioners are

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[43] (1919) A.C. 533
[44] (1988) 2 SCC 293
[45] AIR 1962 SC 159
[46] 1987 Supp SCC 350
[47] (1976) 1 SCC 925
[48] (1991) 1 SCC 86
[49] (1981) 4 SCC 173

governed by the 1984 Act, as amended by the 2014 State Act, does not therefore merit acceptance. Even otherwise this letter dated 01.09.1984 was not intended to govern the age of superannuation of employees of public sector Companies/Corporations/Societies for all times to come. The said letter, whereby the 1984 Act was sought to be made applicable to Corporations/Companies/ Societies, specifies the age of superannuation as 58 years. It is not in dispute that the age of superannuation of employees of these IX Schedule Companies, Corporations and Societies is 58 years. The petitioners' grievance is that the age of superannuation should be enhanced from 58 years to 60 years in terms of the provisions of the 2014 State Act. The letter dated 01.09.1984, issued nearly 20 years prior to the amendment of the 1984 Act by the 2014 State Act, cannot be construed as requiring all public sector Companies/Corporations/Societies to automatically enhance the age of superannuation of its employees from 58 to 60 years.

Section 2(a) of the 2014 Central Act defines "appointed day" to mean the day which the Central Government may, by notification in the official gazette, appoint. The Central Government, by its notification dated 04.03.2014, specified 02.06.2014 as the appointed day. Section 2(f) of the 2014 Central Act is an inclusive definition of "law", and brings within its fold any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification having the force of law before the appointed day i.e., 02.06.2014 either in the whole or any part of the existing State of A.P. Section 100 of the 2014 Central Act relates to the territorial extent of laws and stipulates that the provisions of Part-II shall not be deemed to have effected any change in the territories to which

any law in force immediately before the appointed day extends or applies, and territorial reference in such law to the State of Andhra Pradesh shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within the existing State of Andhra Pradesh before the appointed day.

A "law", as defined in Section 2(f) of the 2014 Central Act which was in force in the State of A.P. before 02.06.2014, would, in view of Section 100 thereof, continue to apply in both the successor States until either the competent authority or the competent legislature of the successor States otherwise provide. In view of Section 100 read with Section 2(a) and 2(f) of the 2014 Act, the 1984 Act, which was in force in the existing State of Andhra Pradesh, would extend to both the successor States. In the light of Section 2(f) read with Section 100 of the 2014 Central Act, employees allotted to both the Successor States, continued to be governed by the laws in force, relating to their service conditions, in the erstwhile State of A.P. before 02.06.2014, till the law was amended subsequently by the concerned successor State. As noted hereinabove, the 1984 Act prescribes the age of superannuation of Government employees as 58 years. Consequently, in view of Section 100 of the 2014 Central Act, the age of superannuation of Government employees, in both the successor States, remained 58 years immediately after 02.06.2014. The 2014 State Act, amending the 1984 Act, was published in the A.P. Gazette dated 27.06.2014. The said Act does not, therefore, have any application to the State of Telangana or to persons other than Government employees within the residuary State of Andhra

Pradesh. It is only after the 2014 State Act amending the 1984 Act, was made by the A.P. State Legislature, which came into force with effect from 02.06.2014, did the 1984 Act, as it stood prior to its amendment, not apply, in terms of Section 100 of the 2014 Central Act, to the government employees of the successor State of Andhra Pradesh.

The State of Ajmer was a Centrally administered Part-C State till its integration with the State of Rajasthan w.e.f. 01.11.1956. The first respondent, in **C.P. Singh**[42], was absorbed into the services of the State of Rajasthan from that date. His services, at the time of re-organisation, came to be governed by the 1951 Rules and, in terms thereof, the first respondent was made to retire on attaining the age of superannuation of 55 years. Rule 11 of the Rajasthan Services (Protection of Service Conditions) Rules, 1957 conferred on employees the right to exercise their option and to elect to be governed, as regards leave and pension, by the rules applicable to them immediately before the appointed day i.e. the Central Civil Service Regulations in the place of the 1951 Rules. The first respondent exercised his option to be governed by the Central Civil Service Regulations. Before the Supreme Court, the State of Rajasthan contended that the option exercised by the first respondent, under Rule 11 of the Rajasthan Services (Protection of Service Conditions) Rules, 1957, should be confined only to leave and pension, and not to the age of retirement.

It is in this context that the Supreme Court held that the option exercised by the 1st respondent, to be governed by the Rules applicable to employees immediately before the appointed day, did not contain any restriction that the option shall be to such rules

excluding the one providing for the age of retirement, or only as they stood on a particular day; the clause "immediately before the appointed day", occurring after the clause "rules applicable to him", clearly related to the word "applicable", and it could not be read to mean the rules as "existing" before the appointed day; the elected rules could not be restricted only to the provisions existing in the past on the appointed day so as to exclude any amendment made in such rules during the service of the employee concerned; the 1951 Rules were applicable to employees who opted for the same, along with the amendments made in future; and there was no rationality in the view that the other rules applicable before the appointed day shall apply but without any amendments, even when such amendments were made during the service period of the employee opting for the same. The Supreme Court observed that the first respondent could not be subsequently deprived of the benefits of the enhanced age of superannuation accruing to him on account of the amendments in the Regulations made in the year 1962 when the first respondent was still in service; and, after the amendment in the Regulations, his retirement age legally became 58 years.

The judgment in **C.P. Singh**[42] has no application to the facts of the cases on hand. The question which arises for consideration in these Writ Petitions is whether the 1984 Act, and the amendment made thereto by the 2014 State Act, are applicable to employees of Public Sector Undertakings. No such question arose for consideration in **C.P. Singh**[42]. It is only if the concerned public sector undertakings, had amended their rules/bye-laws making the provisions of the 2014 State Act applicable to its employees,

would the age of retirement of employees of these legal entities have stood extended to 60 years. It is also not as if employees of these PSUs were asked to exercise their option, and they had chosen to be governed by the 2014 State Act. Even otherwise neither the 1984 Act nor the 2014 State Act provide for the exercise of options by employees of PSUs. Reliance placed by the petitioners on **C.P. Singh**[42] is, therefore, misplaced.

III. HAVE THE IX SCHEDULE ENTITIES AND ITS EMPLOYEES BEEN BIFURCATED BETWEEN BOTH THE SUCCESSOR STATES?

It is contended, on behalf of the petitioners, that, pursuant to the 2014 Central Act, the Companies and Corporations, specified in the IX Schedule thereto, have been re-constituted into separate Corporations/Societies/bodies in the successor States; employees have also been allocated to the successor State corporations/Societies/bodies on the basis of amicably determined modalities; the A.P. State Public Enterprises comprise of employees catering exclusively to the needs of the State of A.P, although the assets and liabilities of Schedule IX Corporations may not have been finally divided among the two successor States; the State Corporations, operating exclusively for the State of A.P have also resolved to enhance the retirement age to 60 years; the said decision is not being implemented only in view of G.O.Ms. No. 112 dated 18.06.2016 issued by the State of Andhra Pradesh; division of the assets and liabilities of IX Schedule entities, as contemplated under the 2014 Central Act, has no relevance to enhancement of the age of superannuation of employees of PSUs; Sections 53 and 68 of the 2014 Central Act provide for the manner in which these assets and liabilities should be distributed; the present issue is not

with reference to the distribution of assets and liabilities of these corporations, but only regarding the age of superannuation of employees working in the units located in State of A.P; and G.O.Ms. No.112 dated 18.06.2016 is not in accordance with the provisions of Sections 53, 68 and 82 of the Act.

On the other hand the Learned Advocate General for the State of Andhra Pradesh would submit that the word 'headquarters', used in Section 53, is not defined in the 2014 Central Act and a clarification has been sought, by the State of Andhra Pradesh, from the Union of India, and the same is awaited; the exercise stipulated, in Sections 53, 68, 71 and 82, is not yet complete; none of the Petitioners have either asserted or established that the requirements of the aforesaid Sections have been complied and completed in a process known to law; Circular dated 29.05.2014 was issued by the Government in consonance with Section 68 and 82 of the 2014 Central Act making it clear that, prior to the appointed day, the arrangements contemplated therein was only for managing the service delivery in the successor States, till the procedure contemplated under the 2014 Central Act is followed and completed; in terms of Section 82, the IX Schedule entities should wait for guidelines to be announced by the Central Government; however, in the meantime, provisional division and allocation of staff may be made as per the operational division organogram, and any other guidelines issued by the State Government in this regard; the main intention was to ensure that service delivery is not affected in any manner; all this goes to show that the requirement of demerger/reconstitution of the Boards of IX Schedule entities is an exercise which would have legal sanction

only after the respective Governments of both the States reach a consensus in this regard and, on failure thereof, to be resolved by the Union of India; and the exercise of exploring the possibility of resolving pending issues, in connection with the division of assets and liabilities and employees of Schedule IX institutions between the two States, was entrusted by the Government of AP vide G.0.Rt. No.145 dated 04.07.2016, and the Government of Telangana vide memo dated 20.7.2016, to the Principal Secretaries to the Government (SR) GAD of both the States, along with a nodal officer to assist them in this regard.

The submission of the Learned Advocate-General, that the Corporations/Companies/Societies of the existing State of Andhra Pradesh are still jointly owned by the successor States of Telangana and Andhra Pradesh, is based on Section 53(2) of the 2014 Central Act. The manner in which the division of assets of State undertakings shall take place is stipulated in Section 53 of the Act. Under sub-section (1) thereof, the assets and liabilities relating to any commercial or industrial undertaking of the existing State of Andhra Pradesh, where such undertaking or part thereof is exclusively located in, or its operations are confined to, a local area, shall pass to the State in which that area is included on the appointed date, irrespective of the location of its headquarters. Under the proviso thereto, where the operation of such undertaking becomes inter-State, by virtue of the provisions of Part-II, the assets and liabilities of (a) the operational units of the undertaking shall be apportioned between the two successor States on location basis; and (b) the headquarters of such undertaking shall be apportioned between the two successor

States on the population ratio. Under Section 53(2), upon apportionment of the assets and liabilities, such assets and liabilities shall be transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by the successor States.

As stipulated under Section 53(1), in cases where the location or the operations of a commercial or industrial State undertaking is confined exclusively within an area falling within either one of the two successor States, then these assets and liabilities shall pass on to such State within whose limits the area is included. The assets and liabilities of such undertakings would, in its entirety, be allotted to the successor State where it is either located or its operations are confined, even if its headquarters is located in the other State.

The proviso to Section 53(1) is attracted where the operations of the commercial or industrial State undertakings, because of the division of the existing State of Andhra Pradesh into two successor States, has become an inter-State undertaking i.e where the commercial or industrial State undertaking was carrying on operations before 02.06.2014 in areas which, after 02.06.2014, fall within both the States of Telangana and Andhra Pradesh. The proviso stipulates that the operational units of such undertakings shall be apportioned between the States of Telangana and Andhra Pradesh on location basis. The effect of proviso (a) to Section 53(1) is that the assets and liabilities of the operational units of such State undertaking shall pass on to the successor State where the operational units are located. The word "apportionment" means the act of distribution by allotment. The assets and liabilities of an

undertaking, which has become inter-State by virtue of the provisions of Part-II of the 2014 Central Act, are to be distributed and allotted to the two successor States in terms of clauses (a) and (b) of the proviso to Section 53(1).

As the proviso to Section 53(1) of the 2014 Central Act requires the assets and liabilities of those undertakings, which have become inter-state by virtue of the provisions of Part-II of the 2014 Central Act, to be apportioned (other than the headquarters) on the basis of its location in either of the States, it is evident that Parliament intended to allocate assets of the IX Schedule public sector undertakings on the basis of its location so that both the successor States could, on its own accord, decide, as it considered appropriate, the manner in which the assets allotted to it should be utilised.

Proviso (b) of Section 53(1) relates to the headquarters of such of those undertakings which are governed by the provisions of Section 53(1) i.e only such of those undertakings whose area of operations fall within both the successor States of Telangana and Andhra Pradesh. The word "headquarters", used both in Section 53(1) and its proviso, though not defined in the Act, can only mean the office that serves as the administrative centre of the undertaking. In the case of such undertakings, the assets and liabilities of its headquarters are required to be apportioned between the two successor States on the basis of the population ratio.

While Section 53(1) and its proviso deal with the manner of apportionment of commercial or industrial undertakings of the erstwhile State of Andhra Pradesh, its actual transfer, consequent

upon apportionment of the assets and liabilities, is stipulated in Section 53(2) which enables these assets either to be transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by both the successor States. Section 53(2) also uses the word "transfer" which means to cause change of ownership. The consequences of apportionment, (allotment of the assets and liabilities to the two States) is, as provided in Section 53(2), a change in the ownership of the assets and liabilities of the Corporations, Companies and Societies listed in the IX Schedule of the 2014 Central Act. The change in ownership of the assets and liabilities is required to be made, in favour of the successor States of Telangana and Andhra Pradesh, either (i) in physical form on mutual agreement or (ii) by making payment or adjustment through any other mode as may be agreed to by the successor States. While apportionment (allotment) of assets to both the successor States is statutorily prescribed, the change in ownership of the allotted assets and liabilities is to be caused by mutual agreement between the two successor States.

The exercise of apportionment i.e allotment of assets (except possibly in relation to the headquarters of some) of most of the Companies/Corporations/Societies belonging to the erstwhile State of Andhra Pradesh, between the Companies/ Corporations/ Societies of the successor States of Telangana and Andhra Pradesh, is complete. While the ownership of all these assets may not have been transferred as yet, i.e change in the ownership of the assets of these Corporations may not have been caused to each of the two successor States, the fact remains that these assets and

liabilities are being utilised and put to use by the Companies/Corporations/Societies of the two successor States of Telangana and Andhra Pradesh. The State of Telangana has formed new Companies/Corporations/Societies, to which the assets and liabilities of the erstwhile Corporations/Companies/ Societies located within its territorial limits have been apportioned (allotted) and the Corporations/Companies/Societies, which were in existence prior to the appointed date (i.e 02.06.2014), are carrying on operations only in those areas which now fall within the successor State of Andhra Pradesh. These Companies/ Corporations/Societies, carrying on its operations within the residuary State of Andhra Pradesh, are independently managed either by its Board of Directors or by its Managing Committees, business is being carried on, and agreements are being entered into by each of these legal entities with third parties. The revenues generated, and the profits made, by the separate legal entities of both the successor States belong only to them, and not to the legal entities which were in existence prior to the formation of new Companies/Corporations/Societies by the State of Telangana.

The submission of the Learned Advocate-General that, since the assets and liabilities of the erstwhile Corporations/Companies/ Societies have not been finally transferred, they continue to remain the assets of the pre-existing Companies/Corporations/Societies, whose ownership is jointly held by both the residuary State of Andhra Pradesh and Telangana, is only to be noted to be rejected. Transfer of ownership of the assets of these legal entities can be made either in physical form or by making payment or by way of adjustment in any other mode as stipulated in Section 53(2) of the

2014 Central Act. As two Corporations/Companies/Societies are carrying on business separately in the two successor States, with the assets allotted to them in terms of Section 53(1) and its proviso, a complete change in ownership of the assets and liabilities of these legal entities, not having been caused as yet, has no bearing on the decision whether or not to increase the age of superannuation of the employees of these legal entities.

Section 71 of the 2014 Central Act stipulates that, notwithstanding anything contained in Part-VII, the Central Government may, for each of the companies specified in the IX Schedule, issue directions (a) regarding the division of the interests and shares of the existing State of Andhra Pradesh in the company between the successor States; (b) requiring the reconstitution of the Board of Directors of the Company so as to give adequate representation to the successor States. In view of the non-obstante clause therein, Section 71 would prevail notwithstanding any other provision of Part-VII (i.e Sections 68 to 70 and 72 to 75). It is the Board of Directors which manage the affairs of these companies and, till these companies are bifurcated between both the successor States, both of them are required to have their representatives in the Board of Directors of such companies, for it is only then will be both the States have their say in the management of these jointly owned companies. Power is, therefore, conferred by Section 71(b) of the 2014 Central Act on the Central Government to issue directions to reconstitute the Board of Directors of these Companies to the limited extent of ensuring adequate representation, in the Board, to both the successor States. It is not even the case of the respondents that any

directions have been issued by the Central Government under Section 71(b), reconstituting the Board of Directors/Managing Committees, of the Companies/Corporations/Societies in the IX Schedule, to give adequate representation to both the successor States.

The State of Telangana has, by its unilateral act of forming new Companies/Corporations/Societies to exclusively manage and carry on business with the apportioned assets located within its territorial limits, made it unnecessary for the Central Government to issue directions to reconstitute the Board of Directors under Section 71(b) as it is only if the Companies/Corporations/ Societies, which existed prior to the appointed date i.e. 02.06.2014, were to continue as a single legal entity even after bifurcation would it have been necessary to give representation to both the successor States in the Board of Directors/Managing Committees of such Companies/Corporations/Societies.

The 2014 Central Act is a legislation referable to Articles 2 to 4 of the Constitution of India which, as shall be detailed later in this order, provides for the re-organisation of States. The consequential provisions made by Parliament in the 2014 Central Act is in the exercise of its powers under Article 4 of the Constitution which is only in relation to the reorganisation of the States, and nothing more. The power which Parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution, and is not a power to override the constitutional scheme. (**Mangal Singh v. Union of India**[50]). The

[50] AIR 1967 SC 944

supplemental, incidental or consequential provisions which Parliament is competent to make, while enacting a law under Article 2 or 3, do not have overriding effect for all times, and such provisions cannot be given a wider effect than what is intended. (**Swaran Lata**[7]). After the process of bifurcation is complete, in conformity with any law made by Parliament referred to in Article 2 or 3 of the Constitution, the supplemental, incidental and consequential provisions contained therein, which, by reason of Article 4, have the effect of divesting the newly formed State of its power to deal with its services, would no longer operate. Such power is only kept under suspended animation till the process of reorganisation of services is completed. There is no reason for a transitory, consequential or incidental provision to operate in perpetuity. (**Swaran Lata**[7]).

As the assets of these public sector undertakings are allotted, and its employees are distributed, between the two Successor States, it is for both the successor State Governments to decide the manner in which the allocated assets are to be put to use, and the services of the distributed employees should be utilised. Parliament, while re-organising a State in the exercise of its powers under Articles 2 to 4 of the Constitution, is not concerned with the manner in which the allocated assets should be utilised by each of the two successor States. Once the exercise of allocation is completed, it is for the respective State Governments to manage its own affairs, and the provisions of the 2014 Central Act would have no application thereafter, except to the extent of finally effecting transfer of the apportioned assets.

The contention that the Board of Directors, appointed by the Government of A.P, is merely an ad-hoc body constituted for the purpose of service delivery and nothing more, does not merit acceptance, as it does not find support in any provision either under the Companies Act or the Articles of Association of each of these Companies. The Circular memo dated 29.05.2014, issued prior to bifurcation of the erstwhile State of Andhra Pradesh from 02.06.2014, refers to several meetings conducted with the Managing Directors/CEOs of Government Corporations, Societies and other Undertakings wherein the process of bifurcation of Schedule IX entities, and the preparation of draft demerger plans were discussed. The said Circular also refers to formats and guidelines having been communicated vide several earlier letters. It then refers to the summary of these guidelines, which include draft demerger plans to be placed before the three Member Expert Committee that was being constituted; the draft demerger plans, once approved by the three Member Expert Committee, to be placed before the Chief Ministers of the respective States for final approval; for new entities to be created in the appropriate State; and for the transfer of assets, liabilities and employees to the new entity based on the approved demerger plan.

By the Circular dated 29.05.2014, all Schedule IX entities were requested to ensure that, by 31.05.2014, each organization had two independent operational divisions to provide delivery services in the respective States; these two operational divisions should have their own files, organogram, employees, and separate treasury accounts etc; keeping Section 82 in view, the IX Schedule entities should wait for guidelines to be announced; in the

meanwhile provisional division and allocation of staff may be made as per the operational division organogram, and any other guidelines issued by the State Government in this regard; the main intention was to ensure that service delivery was not affected; depending on the State to which the present MD was allotted, the Secretariat Department of the other State should ensure immediate posting of a joint MD to manage service delivery; and these guidelines should be followed to ensure seamless transfer of the entity activity, and undisrupted delivery of entity services from June 2nd 2014.

After new Companies/Corporations/Societies have been established by the State of Telangana, the Companies/ Corporations/Societies in existence, prior to the appointed day, have ceased to exercise any form of control either over operations being carried on within the State of Telangana or over the assets and liabilities of the units located therein, and are now managing and operating only the units located within the present State of A.P. with employees working thereat. This has rendered the provision of a demerger plan, or for its implementation, a needless exercise. Reliance placed on Circular dated 29.05.2014, issued by the then Government of A.P, is misplaced. As transfer of assets need not be made in a physical form, and Section 53(2) provides for their transfer by making payment or adjustment by any other mode, transfer of ownership, not having been finally effected till date, does not, by itself, justify refusal by the State Government to consider whether the age of superannuation of employees of these Corporations/Companies/Societies should be enhanced from 58 to 60 years.

The contention that these legal entities are still jointly owned and operated by both the States of A.P. and Telangana necessitates rejection. There are, for all practical purposes, two separate corporations/companies/societies in existence functioning and operating within the territorial limits of the respective States of Telangana and A.P. with employees working in these units. The decision, regarding enhancement in the age of superannuation, is required to be taken by the respective Board of Directors/Managing Committees of each of these companies/corporations/societies in accordance with the rules, regulations and bye-laws governing the conditions of service of its employees, and such decisions need not await a change in the ownership of the assets and liabilities of these legal entities which, in terms of Section 53(2), can always be made later by payment or adjustment through any other mode agreed upon by both the successor States.

IV. SECTION 82 OF THE 2014 CENTRAL ACT – ITS SCOPE:

It is submitted, on behalf of some of the petitioners, that Section 82 of the 2014 Central Act, which provides for allocation of State Undertaking employees, is distinct from allocation of persons working in connection with the affairs of the State (under Section 77); the process to be undertaken in terms of Section 82 (Part VIII of the Act), is independent of the apportionment of assets and liabilities of the State entities specified in Part VI of the Act; Clause (b) of Section 71 is not attracted since separate Corporations have been incorporated in the State of Telangana; apportionment of interest and shares under Section 71 would not come in the way of allocation of

employees under Section 82 of Act; determination of modalities, and consequential allocation of employees, under Section 82 vests with the respective State entities; the scheme of the Act does not provide for any role of the Union of India or of the State Government in the enforcement of Section 82; Section 82 should be interpreted harmoniously keeping in view the aims and objects, and the scheme of the 2014 Central Act; the 2014 Central Act does not contemplate a change in the status of personnel of State Undertakings consequent on the re-organization of States; Section 82 requires employees of PSUs etc to continue to function in such an undertaking, corporation etc for a period of one year; during this period, the concerned corporate body should determine the modalities for distributing the personnel between the two successor states; the subject Corporations have determined the modalities, and have distributed personnel between the States of AP and Telangana; all the petitioners herein stood allocated to the State of A.P; even assuming that such modalities have not taken place even then, by now, the one year period stipulated in Section 82 has ended; IX Schedule corporations do not, therefore, have any further power to frame modalities, and it is only the Central Government which can now frame such modalities; Section 82 of the 2014 Act operates only for one year from the appointed date (i.e., 02.06.2014); thereafter, it is Section 77 i.e the residuary provision which alone is attracted; the phrase "***other autonomous bodies***", used in Section 82, has not been defined in the 2014 Central Act; autonomous bodies would include bodies created by an Act of the Legislature or those which derive their authority through such an enactment; there is no prohibition under Section

82 to undertake measures indicated therein even before the appointed day; the only way of reconciling the language used in Sections 53, 68 and 82 is to supply a few words so as to make them meaningful, and bring it in tune with the intention of Parliament; such a power is available to this Court; this Court may read into Section 82 a clause which is implicit as constituting the basic assumption underlying the statutory provision; while interpreting Section 82, the provision ***"distributing the personnel between the two successor State Undertakings etc"*** should be read into the provision ***"distributing the personnel between the two Successor States";*** and, in view of Section 82 of the 2014 Central Act, the exercise of distribution of employees of State Undertakings should be undertaken independent of the apportionment of its assets and liabilities.

On the other hand the Learned Counsel, appearing for a few of the other petitioners, would submit that Section 82 cannot be read as if employees of State Public Sector Undertakings would become Government servants; the phrase ***"between the two successor States"***, used in Sections 53, 68 and 82 of the 2014 Central Act, should be read as ***"between the corporations of the two successor States"***; looking at the legislative intent behind the aforesaid Sections, it cannot be said that the assets and liabilities of the PSUs would be apportioned between the two States, and employees of the PSUs would be allotted to the respective State Governments; such an interpretation would result in closing down the PSUs, which was never the intention of Parliament; the State of Telangana has already incorporated its own PSUs, and the respective PSUs of both the States are operating in the respective geographical areas

of both the States without any overlapping; the Corporations/ Societies have already divided the employees, and have distributed the assets between themselves; and, while there may be a few adjustments here and there, apportionment of assets and liabilities, and allotment of employees, is almost complete.

Section 82, a provision made specifically for employees of public sector undertakings, stipulates that, on, and from the appointed date (i.e 02.06.2014), the employees of State Public Sector Undertakings, Corporations and other autonomous bodies shall continue to function in such undertakings, corporations or autonomous bodies for a period of one year and, during this period, the corporate body concerned shall determine the modalities for distributing the personnel between the two successor States. While the Ninth Schedule to the 2014 Central Act is the list of Government Companies and Corporations (which includes Societies owned by the Government), Schedule X is the list of Government institutions. Section 82 brings within its ambit not only employees of public sector undertakings and corporations, but also employees of autonomous bodies. The word "autonomous" means independent, and "autonomous bodies" referred to in Section 82 can only mean independent bodies other than public sector undertakings and corporations, since the latter are also referred to in Section 82 along with the expression "autonomous bodies". Consequently, employees of all the legal entities listed under the IX and X Schedules of the 2014 Central Act must be held to have been brought within the ambit of Section 82 thereof. The legislative intent, underlying Section 82, is to ensure that employees of public sector undertakings, corporations

and other autonomous bodies (i.e all the entities listed in the Ninth and Tenth Schedules) are continued in the services of the existing entities for a period of one year, within which period the entities concerned are required to determine the modalities for distributing these employees between both the two successor States.

Part VIII of the 2014 Central Act contains provisions relating to services under Sections 76 to 83 thereof. Section 81 confers power on the Central Government to give directions and, thereunder, the Central Government may give such directions to the State Governments of A.P. and Telangana as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of Part VIII (i.e., Sections 76 to 80) and the State Governments are required to comply with such directions. Section 81 of the 2014 Central Act is in pari materia with Section 84 of the Punjab Re-organisation Act, 1966 which related to the *Power of the Central Government to give directions and, thereunder,* the Central Government was empowered to give such directions to the State Governments of Punjab and Haryana, and to the Administrators of the Union Territories of Himachal Pradesh and Chandigarh, as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of the Part and the State Governments and the Administrators were required to comply with such directions. In **Swaran Lata**[7], the Supreme Court observed that the use of the words "for the purpose of giving effect to the foregoing provisions of this part" clearly curtailed the ambit of the Section; the directions that the Central Government could issue under the Section was only for a limited purpose i.e. for the implementation of the scheme for the reorganisation of services; and when the process relating to

integration of services, as envisaged by the supplemental, incidental or consequential provisions for re-organisation of services under a law made by Parliament in exercise of its power under Articles 2, 3 and 4 of the Constitution was completed, such an incidental provision like Section 84 necessarily ceased to have effect.

Unlike the Punjab Reorganisation Act, 1966 which does not contain a similar provision, Section 82 of the 2014 Central Act relates to employees of public sector undertakings. The very fact that Section 81 of the 2014 Central Act confers power on the Central Government to give directions to both the State Governments only for the purpose of giving effect to Section 76 to 80, and not to Section 82, shows that Parliament has made a distinction between All India Services under Section 76 and other Services under Section 77 on the one hand, and employees of public sector undertakings under Section 82 on the other. While conferring power on the Central Government to give directions to both the State Governments in relation to All India Services and other Services, Parliament has, by the use of the words "giving effect to the foregoing provisions of this part", i.e., Sections 76 to 80 in Part VIII of the 2014 Central Act, expressed its intention to exclude employees of public sector undertakings, under Section 82, from the ambit of those Services to which the Central Government has been conferred power to give directions, evidently because employees of public sector undertakings constitute a class distinct and different from officers and employees in the All India Services and in the State Services.

Unlike Section 80 which confers power on the Central Government, on the recommendations of the Advisory Committee, to frame guidelines for allocation of All India Service and State Service employees of the erstwhile State of Andhra Pradesh between the successor States of Andhra Pradesh and Telangana, Section 82 requires the corporate bodies themselves to determine the modalities for distributing its personnel between the two Successor States. It is only because these corporate bodies are legal entities, distinct from the State Government, has Parliament recognised the need for each of these corporate bodies, independently and on its own accord, to prescribe modalities for distribution of its employees between the two successor States.

There is a clear distinction between a body which is created by a statute and a body which, after having come into existence, is governed in accordance with the provisions of a statute. The Societies, governed by the Section 9 of the A.P. Cooperative Societies Act, are not statutory bodies, but are bodies corporate having perpetual succession and a common seal, and hence have the power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. (**Thalappalam Service Coop. Bank Ltd. v. State of Kerala**[51]). The words 'Corporate Body concerned' in Section 82 refers to the public sector undertakings/Corporations and other autonomous bodies in existence on the appointed day i.e. 02.06.2014 for it is only the employees of such legal entities who are required to continue working in such legal entities for a period of one year

[51] (2013) 16 SCC 82

and, during the said period of one year, the concerned corporate body (i.e. the corporate body existing on the appointed day i.e. 02.06.2014) is required to determine the modalities for distributing its personnel between the two successor States.

(a). CONCEPT OF AN ADHOC BOARD FOR SERVICE DELIVERY IS NOT REFERABLE TO ANY OF THE PROVISIONS OF THE COMPANIES ACT:

Circular instructions of the Government cannot override the relevant provisions of the Companies Act or the Articles of Association of each of these companies. The concept of an adhoc board, that too for service delivery in the successor State, is alien to the provisions of the Companies Act or the Articles of Association of these companies. The distinction between the Board of Directors on the one hand, and the Companies on the other, must always be borne in mind. While the former manage the affairs of these companies, the latter are the bodies corporate with a distinct legal entity. A company is an institution functioning in accordance with the provisions of the Companies Act, and the Memorandum and Articles of Association. The modern practice is to confer on the Directors the right to exercise all the company's powers except such as the general law expressly provides must be exercised in a general meeting. (**Gowers Principals of Modern company Law; Life Insurance Corporation of India v. Escorts Ltd.**[52]).

The powers which are strictly legislative are not affected by the conferment of powers on the Directors as the Companies Act provides that an alteration of an article would require a special

[52] AIR 1986 SC 1370

resolution of the company in the general meeting. There are, however, many powers exercisable by the Directors with which the members in the general meeting cannot interfere. The most they can do is to dismiss the Directorate and appoint others in their place, or alter the Articles so as to restrict the powers of the Directors for the future. The only effective way the members in a general meeting can exercise their control over the Directorate in a democratic manner is to alter the Articles so as to restrict the powers of the Directors for the future or to dismiss the Directorate and appoint others in their place. The holder of a majority of the shares of a Company has the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. (**Escorts Ltd.**[51]). The general body of the shareholders can control exercise of the powers, vested by the articles in the Directors, by altering the articles or, if opportunity arises under the articles, by refusing to re-elect the Directors whose action they disapprove. (**Shaw & Sons (Salford) Ltd. v. Shaw**[53]; **Escorts Ltd.**[52]). While the State Government appoints the Board of Directors, in the exercise of its powers as the sole or majority shareholder of the Company, the Board of Directors, on their appointment, exercise overall control over the management of these companies in accordance with the provisions of the Companies Act, the Memorandum of Association and the Articles of Association of the concerned Companies.

A demerger/division plan is required for reconstruction/ bifurcation of the corporations/companies/societies, in existence on the appointed day i.e. 02.06.2014, into two separate

[53] 1953 2 K.B. 113

companies/corporations/societies through the process of demerger of a part of these entities, and the transfer of the demerged undertaking to, and for its merger with, the newly established Companies/Corporations/societies. The State of Telangana, unilaterally incorporated new companies/created new societies to take over the assets and personnel of most of these Ninth and Tenth Schedule entities, rendering the exercise of demerger wholly unnecessary. While the new companies/societies established by the Government of Telangana are now operating the Units, of the Companies/Corporations/Societies in existence as on 02.06.2014 (those listed in the Ninth and Tenth Schedules), located within its territorial limits, with the employees working in these units, the Corporations/Companies/Societies which were in existence on the appointed day i.e., 02.06.2014 now operate the units located within the territorial limits of the residuary State of Andhra Pradesh utilizing the services of employees working in these Units on the appointed day, or those allotted to such units subsequently. Most of the existing companies/societies have also completed the exercise of allocation of its employees between the two successor States.

The power conferred on the Central Government under Section 71(b) is to reconstitute the Board of Directors, and not the concerned corporate body. The bodies corporate function in accordance with the provisions of the relevant enactments, and the Articles of Association/Bye-laws governing them, till their existence is brought to an end by the procedure established by law i.e. in accordance with the provisions of the Act whereby they were created or brought into existence. The exercise of apportionment

of assets and liabilities of these bodies corporate, and for its transfer thereafter to the successor States, is independent of the modalities of distribution of personnel, between the two successor States, which each corporate body concerned is required to determine. Unlike Section 71 which confers power on the Central Government to issue directions regarding division of the interest and shares in these companies, and for the reconstitution of the Board of Directors, neither Section 82 nor any other provision of the 2014 Central Act confer power on the Central Government to issue directions to, or to itself, determine the modalities for distributing the personnel (i.e, employees) of the State Public Sector Undertakings, Corporations and other autonomous bodies between the two successor States.

What Section 82 stipulates is a one year period for determining the modalities for distribution of personnel, and not for the actual allocation/distribution of such employees. No time frame is stipulated under Section 82 for the actual allocation or distribution of personnel, employed in the concerned corporate bodies, between both the successor States. The contention that the IX Schedule Corporations do not have the power to frame modalities after one year, and it is the Central Government which can alone frame such modalities thereafter, is only to be noted to be rejected. Section 82, neither expressly nor by necessary implication, confers any power on the Central Government to determine the modalities for distributing personnel between the two successor States after one year from the appointed day. Even after the period of one year from the appointed day, the concerned

corporate bodies are not disabled from determining the modalities for distributing their personnel between the two successor States.

Section 77 is a specific provision relating to State Services, and is not a residuary provision. The word 'services' in Section 77 means services other than the All India Services referred to in Section 76, and nothing else. There is no provision in the 2014 Central Act which either explicitly, or by necessary implication, stipulates that Section 77 would apply to employees of the corporate bodies, referred to in Section 82, merely because the modalities for the distribution of such employees have not been determined by the concerned corporate bodies within a period of one year. As the legislative intent of Section 82 is to distribute personnel, working in State Public Sector Undertakings/ Corporations and other autonomous bodies, between the two successor States, and Parliament did not intend to bring an end to the very existence of these bodies one year after the appointed day, construing Section 82 in such a manner would result in absurdity.

(b). IS THE ONE YEAR LIMITATION IN SECTION 82 DIRECTORY OR MANDATORY?

The question whether Section 82 of the 2014 Central Act is mandatory or directory depends on the intention of the legislature, and not upon the language in which the intent is clothed. (**Crawford on Statutory Construction — Article 261 at p. 516; State of U.P. v. Manbodhan Lal Srivastava**[54]; **State of M.P. v. Pradeep Kumar**[55]; **Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee**[56]). One must look into the subject-matter and consider the importance of the provision disregarded,

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[54] 1958 SCR 533 = AIR 1957 SC 912
[55] (2000) 7 SCC 372
[56] AIR 1976 SC 263

and the relation of that provision to the general object intended to be secured. (**State of Mysore v. V.K. Kangan**[57]). In ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom and, above all, whether the object of the legislation will be defeated or furthered. (**State of U.P. v. Babu Ram Upadhya**[58]; **May George v. Tahsildar**[59]; **Dattatraya Moreshwar v. State of Bombay**[60]; **Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur**[61]; and **V.K. Kangan**[57]).

The reason behind the provision is an aid to the ascertainment of the legislative intention. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory. (**Crawford, the Construction of Statutes**; **Lachmi Narayan v. Union of India**[62]). Where the statute provides that failure to observe a particular provision would lead to a specific consequence, the provision has to be construed as mandatory. (**Sharif-ud-Din v.**

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[57] (1976) 2 SCC 895, = AIR 1975 SC 2190
[58] (1961) 2 SCR 679 = AIR 1961 SC 751
[59] (2010) 13 SCC 98 : (2010) 4 SCC (Civ) 774
[60] AIR 1952 SC 181
[61] AIR 1965 SC 895
[62] (1976(2) SCC 953

Abdul Gani Lone[63]; **Balwant Singh v. Anand Kumar Sharma**[64]; **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.,**[65]; **Chandrika Prasad Yadav v. State of Bihar**[66]; **May George**[59]).

If a provision is mandatory, it must be strictly construed and followed, and an act done in breach thereof will be invalid. But if it is directory, the act will be valid although its non-compliance may give rise to some other penalty, if any, provided by the Statute. A mandatory enactment must be obeyed or fulfilled exactly, but non-compliance of a directory provision would not affect the validity of the act done in breach thereof. (**Ram Deen Maurya (Dr.) v. State of U.P.**[67]). Where a statute requires that a thing shall be done in the prescribed manner or form, but does not set out the consequences of non-compliance, the question whether the provision is mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. (**Bhikraj Jaipuria v. Union of India**[68]). The fact that no consequences of non-compliance are stated in the statute, is a factor tending towards a directory construction. (**Balwant Singh**[64]; **Sutherland's Statutory Construction, 3rd Edn., Vol. 3**).

The prescription of a one year period in Section 82, for the State public sector undertakings of the erstwhile Government of A.P. to determine modalities for distribution of its personnel between the two successor States, is only to ensure that the employees of each of these Corporate bodies are distributed

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[63] AIR 1980 SC 303
[64] (2003) 3 SCC 433
[65] (2003) 2 SCC 111
[66] AIR 2004 SC 2036
[67] (2009) 6 SCC 735
[68] AIR 1962 SC 113

between both the successor States at the earliest. Since Section 82 neither prescribes any consequence, for the failure of the corporate bodies to determine the modalities within the said period of one year, nor does it stipulate any time period for the actual allocation of these employees to the successor States, it is evident that the prescription of a one year period in Section 82 is only directory, and the mere fact that the one year period has elapsed, does not prohibit any of these public sector undertakings from determining modalities for, or for the actual, allocation of its employees between the two successor states thereafter.

V. DOES THE 2014 CENTRAL ACT RELATE TO THE AGE OF SUPERANNUATION OF EMPLOYEES OF PUBLIC SECTOR UNDERTAKINGS:

It is contended, on behalf of the petitioners, that the 2014 Central Act, a special enactment in terms of Articles 3 and 4 of the Constitution of India, has over-riding effect over all other enactments falling under any of the Entries in the three lists of the VII Schedule to the Constitution of India; the words and phrases used therein are required to be given preference over all other enactments, conventions, and the earlier settled principles of law; residuary powers are vested only with the Central Government; wherever the Section is either silent or does not prescribe any method then, by virtue of the residuary powers, it is only the Central Govt which can issue orders or directions, or take appropriate action; the phrase - "***persons serving in connection with the affairs of the Union or of any State***", used in Sections 77 to 79, are not defined in the Act, and hence no restricted meaning can be assigned to them; they cover all persons whether employed by the State Government, or persons employed in any of the State owned

corporations listed in the IX and X Schedule to the 2014 Central Act; no distinction has been made in the 2014 Central Act between employees of Companies/societies/ cooperative societies etc; irrespective of the place of work, what has to be considered is whether any person is serving, on a substantive basis, in connection with the affairs of the State; all the petitioners fall under this category; any other interpretation would do violence to the provisions of the 2014 Central Act; the Government has approved several resolutions passed by the Boards of these entities to pay dividends, and to contribute to the C.M. Relief fund; the Government cannot approbate and reprobate; as the resolution passed in respect of dividends has been accepted by the Government, it should also accept the resolutions passed for enhancement of the age of superannuation; and, even otherwise, when the Government had argued that it had appointed a chairman and board as a working measure, it should continue the same following the law.

Article 2 of the Constitution of India enables Parliament, by law, to establish new States on such terms and conditions as it thinks fit. Article 3 enables Parliament by law to (a) form a new State by separation of the territory from any State and (d) alter the boundaries of any State. Article 4(1) stipulates that any law, referred to in Articles 2 and 3, shall contain such supplemental, incidental and consequential provisions as Parliament may deem necessary. The supplemental, incidental and consequential provisions which Parliament is empowered to make under Article 4 is in relation to the formation of new States. The 2014 Central Act, a law referable to the aforesaid Articles of the Constitution, was

enacted to provide for the bifurcation of the existing State of A.P. into the successor State of Telangana and the residuary State of A.P.

Article 3 and Article 4 of the Constitution together empower Parliament to make laws to form a new State by separation of the territory from any State, and in so doing to increase or diminish the area of any State. (**Raja Ram Pal v. Hon'ble Speaker, Lok Sabha**[69]). The power, with which Parliament is invested by Articles 2 and 3, is the power to admit, establish, or form new States which conform to the democratic pattern envisaged by the Constitution. (**Mangal Singh**[50]). The creation of new States, by altering the territories and boundaries of the existing State, is within the exclusive domain of Parliament. The law making power under Articles 3 and 4 of the Constitution is paramount, and is neither subjected to nor fettered by Article 246 and Lists II and III of the Seventh Schedule. The Constitution confers supreme and exclusive power on Parliament under Articles 3 and 4 so that, while creating new States by reorganisation, Parliament may enact provisions for, among others, distribution of the assets and liabilities of the predecessor State amongst the new States, and to make provisions for contracts and other legal rights and obligations. The power of the State to enact laws in List II of the Seventh Schedule are subject to Parliamentary legislation under Articles 3 and 4. There is a statutory recognition of the contractual rights and liabilities of the new States which cannot be affected unilaterally by any of the party States either by legislation or by executive action. The power of Parliament to make a law

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[69] (2007) 3 SCC 184

under Articles 3 and 4 is plenary, and traverse over all legislative subjects as are necessary for effectuating a proper reorganisation of the States. (**Mullaperiyar Environmental Protection Forum v. Union of India**[70]). The law made under Articles 2 & 3 may also make supplemental, incidental and consequential provisions which would include provisions relating to the setting up of the legislative, executive and judicial organs of the State essential for an effective State administration under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities, provisions as to services, application and adaptation of laws, transfer of proceedings and other related matters. (**Mangal Singh**[50]).

As noted hereinabove, the power conferred on Parliament, under Articles 2 to 4 of the Constitution, is to form a new State separating the territory from any existing State. The 2014 Central Act provides for the bifurcation of the existing State of Andhra Pradesh and for the creation of the new State of Telangana. It is in furtherance of this object that consequential provisions have been made, including for the division of assets and liabilities of IX and X Schedule entities and for the distribution of personnel of these entities between both the successor States of Telangana and the residuary State of A.P. The 2014 Central Act specifically refers to the matters for which the Central Government has been conferred the power to issue directions, and Section 82 is not one among them. In any event the power conferred on the Central Government, under the 2014 Central Act, is only to issue directions for the orderly bifurcation of the assets , liabilities and

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[70] (2006) 3 SCC 643

personnel of the existing State of A.P. and its legal entities, between both the successor States, and not to prescribe the conditions of service, including the age of retirement, of the personnel distributed between both the successor States.

While we are in complete agreement with the submission, urged on behalf of some of the petitioners, that the 2014 Central Act does not provide for the age of superannuation of employees of public sector undertakings, we are unable to accept the submission that the phrase "***persons serving in connection with the affairs of the Union or of any State***" in Sections 77 to 79, not being defined under the Act, would bring persons, employed in State owned corporations listed in the IX and X Schedules, within the ambit of Section 77. Part VIII of the 2014 Central Act (Section 76 to 83) are the provisions relating to services and, while Section 76 relates to All India Services, Section 77 refers to the other Services i.e., State Services. Section 82, on the other hand, relates to employees of State public sector undertakings, corporations and other autonomous bodies. Accepting the submission that employees of public sector undertakings would also fall within the ambit of Section 77 and 78, would render Section 82 of the 2014 Central Act redundant. As a separate provision has been made for employees of public sector undertakings/corporations/ autonomous bodies, it is evident that Parliament intended that they should be treated distinctly, and not on par with, or in terms of the provisions made for the All India Services and the State Services.

The doctrine of approbate and reprobate has no application, and the mere fact that the Board of Directors of some of these legal

entities have paid dividends to the State Government, and have contributed to the Chief Minister's Relief Fund which was accepted by the State Government, would not, by itself, obligate the State Government to accept their proposal for enhancement of the age of superannuation of its employees. As shall be detailed hereinafter, the State Government is, however, required to consider the proposal submitted by the respective Board of Directors/Managing Committees of these companies, corporations and societies, and take a decision, with respect to each of these entities, whether or not the proposals submitted by the Board of Directors/Managing Committees, for enhancement of the age of superannuation of its employees, necessitate acceptance.

VI. ARE THE 1984 AND THE 2014 STATE ACT APPLICABLE TO INSTITUTIONS IN THE X SCHEDULE OF THE 2014 CENTRAL ACT:

It is contended, on behalf of the petitioners, that Section 75, which is the only provision in the 2014 Central Act which deals with X Schedule institutions, does not provide for apportionment of assets, liabilities and employees of Schedule X Institutions; Sections 68 r/w 53 of the 2014 Central Act do not govern apportionment of assets etc of X Schedule Institutions; the 2014 State Act, amending the 1984 Act, would automatically apply to employees working in the institutions listed under the X Schedule of the 2014 Central Act; Sections 63, 68 and 82 of the 2014 Central Act speak of PSUs, Corporations and other autonomous bodies only, and do not speak of Societies listed in the X Schedule; neither Section 82 nor any other provison of the 2014 Central Act provide for the manner in which autonomous bodies should be treated; in **A.P. State Council for Higher Education v. Union of**

India[71], the Supreme Court held that the principles enshrined in Section 47 of the Act shall govern the distribution of assets; Section 82 does not place any embargo on Societies being segregated, including those in the X schedule, on its own resolution; and in the absence of a specific provision in the Act, providing for the apportionment of assets and liabilities in respect of Societies in the X schedule, the procedure contemplated under the provisions of the Societies Registration Act operates, and enables the bifurcated Societies to have their own entity vis-a-vis their operations in the respective States.

On the other hand the Learned Advocate-General, for the State of Andhra Pradesh, would submit that, since the IX and X Schedule Institutions were not bifurcated, the Telangana Government started constituting its own entities essentially on the premise that whatever is located in the territory of the Telangana State belongs to the State of Telangana, and therefore the said Government would have solitary control dehors the provisions of the 2014 Central Act; this exercise, in some cases, resulted in freezing of bank accounts crippling the functions as well as the Institutions located in the State of Andhra Pradesh contrary to the letter and spirit of the provisions of the 2014 Central Act concerning IX and X Schedule Institutions; one such Institution was the Andhra Pradesh State Council for Higher Education whose bank account was frozen at the behest of the Telangana State Council for Higher Education; in **APSCHE**[71], the Supreme Court held that the action of the State of Telangana was not in consonance with the 2014 Central Act; the review petition,

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[71] (2016) 6 SCC 635

filed by the State of Telangana, ended in dismissal; citing the above Judgment, the Government of India, Ministry of Home Affairs addressed letter dated 9.8.2016 to both the Chief Secretaries of the States of Telangana and Andhra Pradesh to nominate two members from each State to be the members of the Committee under the Chairmanship of the Additional Secretary (LWE) for resolving the disputes relating to Schedule X institutions under the 2014 Central Act; and the above Committee is being constituted.

Section 75, in Part VII of the 2014 Central Act, relates to continuance of facilities in certain State institutions and, under sub-section (1) thereof, the Governments of Andhra Pradesh and Telangana, as the case may be, shall, in respect of the institutions specified in the Tenth Schedule to the Act located in that State, continue to provide facilities to the people of the other States which shall not, in any respect, be less favourable to such people than what was being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within a period of one year from the appointed day or, if no agreement is reached within the said period, as may be fixed by order of the Central Government. Section 75(2) enables the Central Government, at any time within one year from the appointed day and, by notification in the Official Gazette, to specify, in the Tenth Schedule referred to in Section 75(1), any other institution existing on the appointed day in the States of Andhra Pradesh and Telangana and, on the issue of such a notification, such Schedule shall be deemed to be amended by the inclusion of the said institution therein. The Tenth Schedule to the 2014 Central Act lists several training

institutions/centres under the head continuance of facilities in certain State institutions.

The A.P. State Council for Higher Education (for short, 'APSCHE') is a body constituted under Section 3 of the A.P. State Council for Higher Education Act, 1988 to advice the Government in matters relating to higher education in the State, and to oversee its development with perspective planning. APSCHE figures at item No.27 of the X Schedule to the 2014 Central Act. On the question of ownership and control of the APSCHE, a Division Bench of this Court held that, on a fair reading of Section 5 of the 2014 Central Act, it was evident that the State of A.P. was a mere user of the city of Hyderabad for a maximum period of ten years; it had no proprietary right, title and interest in the city; none of the assets, which belonged to the erstwhile State of A.P. located in Hyderabad, could be claimed by the State of A.P. except in accordance with the 2014 Central Act; and the assets, properties and funds lying at the present location of APSCHE belonged to the Telangana State Council for Higher Education which came into existence pursuant to G.O.Ms.No.5 dated 02.08.2014.

In **APSCHE**[71] the Supreme Court noted the submission, urged on behalf of the State of Telangana, that the successor State of A.P. had no right over the institutions in the city of Hyderabad, as Hyderabad fell within the successor State of Telangana; and, in view of Section 75 of the 2014 Central Act, assets belonging to the specific institutions in the X schedule, exclusively belonged to the State of Telangana since the 2014 Central Act did not provide for its apportionment. The Supreme Court expressed its inability to agree with this contention holding that, if this contention was

accepted, it would render Section 47 of the 2014 Central Act, which provides for apportionment of the assets and liabilities among the successor States, useless and nugatory; it could not be assumed that the Legislature had in contemplation, while enacting the 2014 Central Act, the complete take over of the assets of the erstwhile APSCHE by the Telangana State Council for Higher Education, on the ground that the said institution happened to be in Hyderabad, which is part of Telangana; the assets of the APSCHE of the undivided State of A.P, i.e the assets existing upto the date of bifurcation, may be divided between the two successor States in the population ratio of 58:42 as provided under Section 2(h) of the 2014 Central Act, if both the successor States were agreeable thereto; and if the two successor States were unable to agree, the Central Government may constitute a Committee which may be directed to arrive at an agreement in accordance with the provisions of the 2014 Central Act. The Supreme Court relied on Section 47 of the 2014 Central Act for bifurcation of the assets and liabilities of APSCHE, an institution listed in the X Schedule.

Section 47(1) stipulates that the provisions of Part-VI of the 2014 Central Act shall apply in relation to apportionment of the assets and liabilities of the existing State of A.P. before the appointed day. In **W. W. Joshi v. State of Bombay**[72], while considering the word "liability" used in Sections 87 and 88 of the States Reorganisation Act, 1956, the Bombay High Court observed that Part VII of the Act related to apportionment of assets and liabilities; Section 87 and 88 fell under this part; the word “liability”, in its widest import, meant an obligation or duty to do

[72] AIR 1959 Bombay 363 (2)

something or to refrain from doing something; and Parliament intended to include, in the word "liability", not only a financial obligation, but also obligations of every other kind, including one of reinstating a government servant wrongly dismissed.

In **Mohd. Yaqub v. Union of India**[73], a Full bench of the Delhi High Court held that sub-sections (3) and (4) of Section 67 of the Punjab Reorganisation Act made it manifest that, upon the dissolution of the Electricity Board, its assets, rights and liabilities had to be apportioned between the successor States; employees of the Punjab Electricity Board constituted its liabilities liable to be apportioned between the successor States under sub-sections (3) and (4) of Section 67 of the Punjab Reorganisation Act; and this liability, in terms of sub-section (3) of Section 67 of the Punjab Reorganisation Act, had to be apportioned between the successor States'. In **Electricity Employment Union v. Union of India**[74], the Supreme Court held that the views expressed by the Full Bench of the Delhi High Court, in **Mohd. Yakub**[73], that allocation of services of employees of the erstwhile Punjab State Electricity Board, among the successor States, could be done under Section 67(3) and not under Section 82 of the Act, was correct.

While the requirement, of distribution of employees of public sector undertakings between the successor States, was read into the term 'liabilities', in the absence of a specific provision in the Punjab State Re-organization Act for distribution of such employees, Section 82 of the 2014 Central Act is a specific provision made for the distribution of employees of State public sector undertakings, corporations and other autonomous bodies

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[73] ILR (1970) 2 Delhi 167
[74] (2000) 7 SCC 339

between both the Successor States of Telangana and the residuary State of A.P. While Section 68 of the 2014 Central Act refers to companies and corporations specified in the IX Schedule, and Section 53 to the assets and liabilities of commercial or industrial undertakings of the existing State of A.P, Section 82 not only refers to public sector undertakings and corporations but also to other autonomous bodies. The word "autonomous bodies" can only mean entities other than the commercial and industrial undertakings referred to in Section 53, and companies and corporations referred to in Section 68, as the legal entities referred to in Section 53(1) and 68(1) would fall within the ambit of State public sector undertakings and corporations as referred to in Section 82. Autonomous bodies would, necessarily, mean those institutions referred to in both the IX and X Schedule to the 2014 Central Act which are not State public sector undertakings and corporations. By the use of the words 'autonomous bodies', in addition to State public sector undertakings and corporations, in Section 82, Parliament intended to bring employees of all the legal entities/institutions, referred to in the IX and X Schedules, within its ambit.

Neither Section 75 nor any of the other provisions of the 2014 Central Act relate to distribution of employees of the IX and X Schedule entities between the two successor States. As each of these entities are required to determine the modalities of distribution of its employees between the two successor States, as new entities have already been established by the State of Telangana, and the corporate bodies hitherto functioning within the composite State of A.P. are now exercising control only over the

units located within the present State of A.P, failure to complete the exercise of a change in the ownership, of the assets and liabilities of the IX and X Schedule entities, would have no bearing on the distribution of employees of public sector undertakings/ corporations/ autonomous bodies between the entities controlled exclusively by each of the successor States.

VII. SECTION 78-A OF THE A.P. EDUCATION ACT:

It is contended, on behalf of the petitioners, that the new societies i.e. the A.P. Residential Educational Institutions Society (A.P.R.E.I.S) and the A.P. Social Welfare Residential Educational Institutions Society (A.P.S.W.R.E.I.S) for the State of Andhra Pradesh, and new societies i.e the Telangana Residential Educational Institutional Society and the Telangana Social Welfare Residential Educational Institutions Society for the State of Telangana, were brought into existence after registration under the Societies Registration Act; once new societies are formed, with the area of operations restricted to the territorial limits of the Successor State of Andhra Pradesh which are, presently, fully funded by the Successor State of Andhra Pradesh, the Government of Andhra Pradesh is estopped from contending that it has no legislative competence in respect of these Societies; even without taking into consideration the spirit of Section 78A of the AP Education Act, 1982 and without considering any of the special circumstances which led to extension of the benefit of the enhanced age of superannuation to employees of APREIS, APSWREIS and APTWREIS, G.O.Ms.No.112 was issued by the Government purporting to cover even these societies; the schools run by the APREIS and the APSWREIS are spread across the entire

erstwhile composite State of Andhra Pradesh unlike other Institutions/ Centres mentioned in Schedule-X that are exclusively located in either one of the successor States of Andhra Pradesh or Telangana; though the 2014 Central Act does not provide for formation of new Societies for the respective successor States, the division of the then existing Societies was proposed and approved by the erstwhile Government of Andhra Pradesh, vide respective Government Orders issued in this regard prior to the 'Appointed Day' itself, taking recourse to the provisions of the Societies Registration Act; APREIS, APSWREIS and APTWREIS are provided 100% grant-in-aid by the State Government; employees working in private educational institutions have been extended the benefit of the enhanced age of superannuation under Section 78(A) i.e., 60 years; denying similar treatment to institutions belonging to the above societies, which answer the definition of Section 18 of the A.P. Education Act, results in discrimination, and is in violation of Article 14 of the Constitution of India; the Andhra Pradesh Education Act, 1982 contemplates taking over all schools run by these Societies, if necessary in public interest, through respective Government Orders; and the benefit of the enhanced age of superannuation should be extended to employees of the Societies, more particularly in the light of the provisions of the Andhra Pradesh Education Act.

Section 78-A of the Andhra Pradesh Education Act, 1982 was amended by the Andhra Pradesh Education (Amendment) Act, 2014 (Act No.1 of 2015) which was published in the A.P. Gazette on 03.01.2015 and Section 78-A (1) was substituted. The amended Section 78-A(1) and its proviso stipulate that every

teacher or member of the non-teaching staff, employed in any aided private educational institution, shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. Under the proviso thereto, every teacher or member of the non-teaching staff employed in any aided private educational institution, who retired from service on attaining the age of fifty eight years on and from 02.06.2014, till the date of publication of the Andhra Pradesh Education (Amendment) Act, 2014, shall be re-inducted into the service/post as such with effect from the date of publication of the said Act. Under the second proviso thereto, the said interregnum period, from 02.06.2014 till the date of publication of the Andhra Pradesh Education (Amendment) Act, 2014, shall be treated in such manner as may be prescribed. In the explanation to Section 78-A the words "fifty eight years or sixty years as the case may be" were substituted by the words "sixty years".

While employees working in Government educational institutions, and employees in aided private educational institutions, have been extended the benefit of the age of retirement as 60 years, employees of societies, wholly owned by the Government and which run these educational institutions, continue to retire from service on their attaining the age of 58 years. As employees of these Societies are not government employees, the provisions of the 1984 Act, as amended by the 2014 State Act, are not applicable to them. As employees working in aided private educational institutions have now been extended the benefit of the enhanced age of superannuation of 60 years, in terms of the amended Section 78-A of the A.P. Education Act, the

State Government is obligated to consider whether or not a similar benefit should be extended to the employees of its wholly owned Societies which also administer educational institutions in the State of Andhra Pradesh. That does not, however, justify a mandamus being issued to the State Government to enhance the age of superannuation of employees in all these societies to 60 years as these are matters for the State Government to decide taking various factors into consideration. In the exercise of its jurisdiction under Article 226 of the Constitution of India, this Court would not undertake the exercise of determining the age of superannuation of employees of these societies on a comparative evaluation of their functions vis-à-vis employees of Government educational institutions or employees of aided private educational institutions. Suffice it to hold that, as employees working in Government educational institutions and employees working in aided private educational institutions in the present State of A.P have been extended the benefit of the age of superannuation of 60 years, the State Government shall consider the claim of employees, of its wholly owned Societies running educational institutions, for being extended the similar benefit of the enhanced age of superannuation of 60 years.

VIII. DO ALL ASSETS, CONSEQUENT UPON BIFURCATION, PASS ON TO THE STATE? DO STATUTORY CORPORATIONS CEASE TO EXIST AFTER BIFURCATION?

It is contended by Sri M. Surendra Rao, Learned Senior Counsel appearing on behalf of the petitioners, that, after the States Reorganization Act. 1956 came into force, several Acts were made providing for reorganization of the States; the Punjab

Reorganization Act, 1966 ("PRA" for short), thereafter the Bihar Reorganization Act, 2000 ("BRA" for short), the Madhya Pradesh Reorganization Act, 2000 ("MPRA" for short), and the Uttar Pradesh Reorganization Act, 2000 ("UPRA" for short); certain provisions of these enactments are similar to the 2014 Central Act; while Section 66 of the BRA enables statutory corporations also to function in the areas in which they were functioning before the appointed day under the directions of the Central Government, there is no such provision in the 2014 Central Act; if Section 68 is treated to be a like provision, it enables statutory corporations to continue subject to sub-section (2) of Section 68, in the sense that its assets, rights and liabilities are liable to be apportioned between the successor States; in other words, the statutory corporations will not have any assets, rights or liabilities; the said assets, rights and liabilities will pass on to the successor States on being apportioned; Section 68 read with Section 53 of the 2014 Central Act brings about automatic dissolution of the undertaking; provisions akin to Section 62 of the MPRA and Section 65 of the BRA are not available in the 2014 Central Act; the possibility of a State Undertaking continuing to exist, in terms of Section 68, is subject to Section 68(2) (which is guided or governed by Section 53); and continuance of a State undertaking is not contemplated under the 2014 Central Act.

Learned Senior Counsel would submit that Section 70 of the 2014 Central Act permits the A.P. State Financial Corporation ("APSFC" for short) (which was established under the State Financial Corporation Act, 1951) to continue to function in those areas in respect of which it was functioning immediately before the

appointed day; a similar provision, relating to other public sector undertakings, of the existing State of A.P (combined State of A.P), is not provided in the 2014 Central Act; by necessary implication, the other public sector undertakings cannot continue to function in the areas in respect of which they were functioning immediately before the appointed day; when the PSUs, either in IX or X schedule, do not have their continued existence (as they were continuing earlier) in view of the provisions of Part-II of the 2014 Central Act read with Parts VI and VII thereof, the assets, by necessary implication, and by operation of Section 52(4), Sections 53 & 68, become the properties of the Successor States; as the provisions of the 2014 Central Act do not permit continuance of PSUs in the IX & X schedule, and as no provision is made for the compulsory intervention of the Central Government or the superintendence of the Central Government, the PSUs cannot continue to exist after bifurcation.

Learned Senior Counsel would contend that, yet another reason to conclude that PSUs do not continue to operate in the areas in which they were operating earlier, is that the State of A.P. (prior to the appointed day) was providing necessary funds, investments, loans or advances to such PSUs; on bifurcation of the State, such PSUs cannot operate in the area, to which the assets were apportioned, unless the Successor States mutually agree to invest in or extend loans or advances to such bodies (PSU); there is no provision in the 2014 Central Act enabling an agreement to be reached (entered into) between the Successor States for continuance of the PSUs, or for allowing the PSUs to operate in the areas in which they were operating earlier; in the absence of any

such provision, the intendment of the 2014 Central Act is that such PSUs, except the APSFC, cannot continue to operate in the areas in which they were operating earlier; there is no provision for the existing corporation to prepare proposals for formation of new corporations & transfer of assets, rights and liabilities of the existing corporation to the new corporations; such a provision is available only in respect of the APSFC, as contained in Section 70(3) of the 2014 Central Act; the principle underlying Section 70 cannot be extended to other PSUs, as there is a clear provision to the effect that the assets, rights & liabilities of the PSU shall be apportioned between the Successor States on location basis, and on the basis of population ratio; on an analysis of the aforesaid provisions it is clear that, wherever the words "Successor State" is used, it shall be given a plain meaning as stipulated in Section 2(j) of the 2014 Central Act; the words "Successor State" cannot be given an expanded meaning so as to include new PSUs which may be formed by dissolving the existing PSU or otherwise; such an interpretation would do violence to the provisions of the 2014 Central Act; a harmonious interpretation would also not permit such a course; the intendment of the Act is clear that, on bifurcation of the State of A.P, the assets & liabilities of the composite State of A.P are liable to be apportioned between the Successor States as stipulated in Part-VI of the Act; the assets and liabilities of State undertakings, and body corporates, are liable to be divided in terms of Section 52(4) between the State of A.P. and the State of Telangana; in terms of Sections 53 and 68, the body corporate looses it entity, as the Act does not permit its continuance; the assets, rights and liabilities of PSUs and body

corporates should be divided and apportioned between the Successor States, and not between the successor entities; the assets, rights and liabilities of PSUs fall on the Successor States in terms of Sections 52(4), 53 and 68 of the Act; the employees shall also stand distributed between the two Successor States; and all the petitioners, who have become employees of the Successor State of A.P, are entitled to the benefit of the 2014 State Act, and to be continued in service till they attain the age of 60 years which is the age of superannuation provided under the said Act.

Part VI of the 2014 Central Act relates to apportionment of assets and liabilities, and Section 47(1) thereunder stipulates that the provisions of Part-VI shall apply in relation to the apportionment of assets and liabilities of the existing State of Andhra Pradesh immediately before the appointed day. Section 47(2) provides that the successor States shall be entitled to receive benefits, and shall be liable to bear the financial liabilities arising out of the decisions taken by the existing State of Andhra Pradesh. Section 47(3) stipulates that the apportionment of assets and liabilities shall be subject to such financial adjustment as may be necessary to secure just, reasonable and equitable apportionment of the assets and liabilities amongst the successor States. Section 47(4) provides that any dispute, regarding the amount of financial assets and liabilities, shall be settled through mutual agreement, failing which by order of the Central Government on the advice of the Comptroller and Auditor-General of India.

Section 52 relates to investments and credits in certain funds and, under sub-section (3) thereof, the investments of the existing State of Andhra Pradesh, immediately before the appointed

day, in any private commercial or industrial undertaking, the objects of which are confined to a local area, shall belong to the successor State in which such area is included on the appointed day. Under the proviso thereto, investments in such entities, having multiple units situated in different parts of the existing State, and such parts fall within the territories of the States of Andhra Pradesh and Telangana, shall be apportioned between the successor States on the basis of the population ratio. Under Section 52(4) where any body-corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Andhra Pradesh or any part thereof has, by virtue of the provisions of Part II, become an inter-State body-corporate, the investments in, or loans or advances to, any such body corporate by the existing State of Andhra Pradesh made before the appointed day shall, save as otherwise expressly provided by or under the Act, be divided between the States of Andhra Pradesh and Telangana in the same proportion in which the assets of the body corporate are divided under the provisions of Part-VI. Section 52(4) is applicable save as is otherwise expressly provided by or under the 2014 Central Act. Unless expressly provided otherwise, the investments, loans and advances made, by the existing State of Andhra Pradesh, in any body corporate shall be divided between both the successor States in the same proportion in which the assets of the body corporate are divided.

Section 64, the residuary provision, stipulates that the benefit or burden of any asset or liability of the existing State of Andhra Pradesh, not dealt with under Sections 47 to 63, shall pass to the State of Andhra Pradesh in the first instance, subject to

such financial adjustment as may be agreed upon between the States of Andhra Pradesh and Telangana or, in default of such agreement, as the Central Government may, by order, direct. Section 65 provides that where the successor States of Andhra Pradesh and Telangana agree that the benefit or burden of any particular asset or liability should be apportioned between them in a manner other than that provided for under Sections 47 to 64, then, notwithstanding anything contained in the said Sections (Sections 47 to 64), the benefit or burden of that asset or liability shall be apportioned in the manner agreed upon. In effect, Section 65 enables the successor States of Andhra Pradesh and Telangana to agree upon any mode of apportionment of a particular asset or liability notwithstanding what is stipulated in Sections 47 to 64 of Part-VI of the Act.

Section 66 confers power on the Central Government to order allocation or adjustment in certain cases. Thereunder where, by virtue of any of the provisions of Part-VI of the Act (ie Sections 47 to 67), either of the successor States of Andhra Pradesh and Telangana become entitled to any property or obtain any benefits or become subject to any liability, and the Central Government is of the opinion, on a reference made to it within a period of three years from the appointed day by either of the States, that it is just and equitable that such property or those benefits should be transferred to or shared with the other successor State, or that a contribution towards that liability should be made by the other successor State, it shall either allocate the said property or benefits in such manner between the two States, or order the other State to make to the State, subject to the

liability, such contribution in respect thereof, as it may, after consultation with the two State Governments, by order, determine.

Section 66, in effect, enables either of the States of Telangana and Andhra Pradesh to make a reference to the Central Government that it is just and equitable that a particular property or its benefits should either be transferred to, or be shared with, them. Thus, even in cases where Part-VI itself prescribes the manner in which the assets and liabilities should be apportioned between the two States, it is open to either of the two States to make a reference to the Central Government that, despite the mode prescribed under the Act, such property must be transferred to, or be shared with, the other State on just and equitable grounds. On such a reference being made, Section 66 confers power on the Central Government to determine the manner of transfer of the said asset or liability between the two successor States after consultations with both of them.

The IX Schedule to the 2014 Central Act refers both to Sections 68 and 71, and contains a list of Government Companies/Corporations. While the heading does not refer to Societies, the list discloses that, in addition to Government Companies and Corporations, Societies established by the State Government are also included therein. Part-VII of the 2014 Central Act are the provisions relating to certain corporations. Section 68, thereunder, contains the provisions for various companies and corporations. Under sub-section (1) thereof, the Companies and Corporations specified in the Ninth Schedule, constituted for the existing State of Andhra Pradesh, shall, on and from the appointed day, continue to function in those areas in respect of which they

were functioning immediately before that day, subject to the provisions of Section 68. Section 68(1) relates to the functioning of companies and corporations specified in the Ninth Schedule, and provides for these Companies and Corporations to continue to function in those areas where they were functioning before 02.06.2014, subject to the provisions of Section 68 which would, necessarily, include sub-section (2) thereof. Section 68(2) provides that the assets, rights and liabilities of the companies and corporations, referred to in sub-section (1), shall be apportioned between the successor States in the manner provided in Section 53.

While Section 53(1) and its proviso relate to the apportionment of the assets and liabilities of commercial or industrial undertakings of the erstwhile State of Andhra Pradesh, Section 68(2) provides that the assets and liabilities of the companies and corporations specified in the Ninth Schedule, [even those which are not commercial or industrial undertakings falling within the ambit of Section 53(1)], shall be apportioned between the States of Telangana and Andhra Pradesh in accordance with Section 53. In view of Section 68(2) the manner in which the assets, rights and liabilities, of the companies and corporations specified in the Ninth Schedule, should be apportioned is as provided in Section 53 of the Act. While Section 68(2) relates to the apportionment of assets, rights and liabilities of the companies and corporations in the Ninth Schedule, the power conferred on the Central Government under Section 71(a) is regarding the division of interests and shares of Companies between the States of Telangana and Andhra Pradesh.

A company is a legal entity distinct and different from the shareholders who own shares in it. A corporation is an artificial being, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of the law, it possesses only those properties which the charter of its creation confers on it, either expressly, or as incidental to its very existence. A distinct juristic person with a corporate structure conducts the business, with the added facilities enjoyed by companies and keeping the quasi-autonomy which comes in handy from the point of view of business management. The characteristics of Corporations, their rights and liabilities, functional autonomy and juristic status, are jurisprudentially recognised as of a distinct entity even where such corporations are but State agencies or instrumentalities. For purposes of the Companies Act, 1956, a government company has a distinct personality which cannot be confused with the State. (**Som Prakash Rekhi v. Union of India**[75]).

A statutory corporation has a personality of its own which is distinct from that of the State or other shareholders. It cannot be said that a shareholder owns the property of the corporation or carries on the business with which the corporation is concerned. (**A.P. State Road Transport Corpn. v. ITO**[76]). In the eye of the law, the Corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is not a government department nor do its powers fall within the province

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[75] (1981) 1 SCC 449
[76] AIR 1964 SC 1486

of the government. (**Taslin v. Nannaford**[77]; **A.P. State Road Transport Corpn.**[76]).

An incorporated company is a legal person, it has a separate existence, and the law recognises it as a juristic person, separate and distinct from its members. (**Heavy Engineering Mazdoor Union v. State of Bihar**[78]; **M/s. Electronics Corporation of India Ltd. v. Secretary Revenue Department, Govt. of A.P.**[79]). The property of the company is not the property of the shareholders. A shareholder has merely an interest in the company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the distributed profit. (**M/s.Electronics Corporation of India Ltd.**[79]; **Rustom Cavasjee Cooper v. Union of India**[80]). Companies, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government which only owns its share capital. (**M/s.Electronics Corporation of India Ltd.**[79]; **Western Coalfields Limited v. Special Area Development Authority, Korba**[81]).

A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one, and that too the State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares. (**M/s. Electronics Corporation of India Ltd.**[79]). The identity of the government company remains distinct from the Government. A

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[77] (1950) KB 18
[78] 1969(1) SCC 765
[79] AIR 1999 SC 1734
[80] (1970) 1 SCC 248
[81] (1982) 1 SCC 125

government company is not identified with the State Government, but is placed under a special system of control, and is conferred certain privileges by virtue of the provisions contained in the Companies Act. Merely because the entire shareholding is owned by the State Government will not make the incorporated company, the State Government. (**A.K. Bindal**[40]; **Nareshkumar Badrikumar Jagad**[34]).

A government department is not only completely controlled and financed by the Government but has also no identity of its own. The money earned by such a department goes to the Government exchequer, and the losses incurred by the department are losses of the Government. A Corporation, on the other hand, is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the Government does not figure in any litigation to which it is a party. (**State of Punjab v. Raja Ram**[82]; **Nareshkumar Badrikumar Jagad**[34]; **State of Bihar v. Union of India**[83]; **S.S. Dhanoa v. MCD**[84]; **K. Jayamohan v. State of Kerala**[85]; **Hindustan Steel Works Construction Ltd. v. State of Kerala**[86]; **Mohd. Hadi Raja v. State of Bihar**[87] and **State v. Kulwant Singh**[88]).

In the case of companies, in which either the whole or a majority of the shares are held by the State Government, such a company is not the State Government itself, as it has a legal entity distinct and different from that of the State Government. While the

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[82] (1981) 2 SCC 66
[83] (1970) 1 SCC 67
[84] (1981) 3 SCC 431
[85] (1997) 5 SCC 170
[86] (1997) 5 SCC 171
[87] (1998) 5 SCC 91
[88] (2003) 9 SCC 193

assets and liabilities belong to the company, the State Government holds shares therein and, in addition thereto, may also have other interests as a result of extending loans and advances etc to such companies. It is in relation to the division of interests and shares in these Ninth Schedule companies does Section 71(a) confer power on the Central Government to issue directions.

Section 73 provides that where, on reorganisation of the existing State of Andhra Pradesh, any body corporate, any co-operative society, any commercial or industrial undertaking of the existing State of Andhra Pradesh is reconstituted or reorganized or amalgamated with any other body corporate, co-operative society or undertaking or is dissolved and, in consequence of such reconstitution, reorganisation, amalgamation or dissolution, any workman employed therein is transferred to or re-employed by any of the body corporate, co-operative society or undertaking, then the transfer or re-employment of such a workman shall not entitle him to claim retrenchment compensation under Section 25(f) or Section 25(ff) or Section 25(fff) of the Industrial Disputes Act.

While Section 73, no doubt, disentitles a workman from claiming retrenchment compensation on his services being transferred or on his being re-employed by a body corporate, co-operative society or undertaking different from the one wherein he was hitherto employed, it is necessary to note that, while making such a provision, Parliament was conscious that, on the division of the State of Andhra Pradesh, the existing body corporate, co-operative society or undertaking may be required to be reconstituted or reorganized or amalgamated or dissolved, after the assets and liabilities of the existing body corporate is divided

between both the successor States of Telangana and Andhra Pradesh.

As noted hereinabove, the 2014 Central Act is an Act which provides for the creation of two States on the bifurcation of the existing State of Andhra Pradesh, and for apportionment of all the assets and liabilities of the existing State of Andhra Pradesh including those entities owned and administered by it, between the two successor States. The 2014 Central Act does not intend to put an end either to the functioning, or to the existence, of these State Government undertakings. From a reading of Section 73, it is evident that these corporations/co-operative societies/ undertakings were intended to be continued in both the successor States, albeit after reorganisation or reconstitution or amalgamation. The proviso to Section 73 ensures that the terms and conditions of service applicable to workmen, after their transfer or re-employment, are not less favourable than those applicable to them prior to their transfer or re-employment; and that the employer, in relation to the body corporate, co-operative society or undertaking to which the workmen are transferred to or are re-employed, is liable to pay to the workmen retrenchment compensation, if they are retrenched from service, treating their services as continuous and as an uninterrupted.

The proviso to Section 73 protects the services rendered by the workmen in the existing entity, even after their transfer or re-employment in the newly created entity. While the 2014 Central Act does not contain a similar provision for employees, who do not fall within the definition of a "workman" under the Industrial Disputes Act, it is clear from Section 73 and its proviso that these

body corporates/ companies/undertakings were intended to continue functioning even after bifurcation, but the form in which these undertakings were to continue their operations was left to the respective Governments, of the newly created States, to decide.

It is evident, from the voluminous material placed on record by the petitioners, that the Government of Telangana has created new companies/corporations/societies to utilise the apportioned assets of the Ninth Schedule entities, and has employed therein those, working in the erstwhile legal entities, who were either allocated to, or have been identified as to be allotted to, the State of Telangana. It has not been disputed before us that almost all the petitioners, in these batch of Writ Petitions, are employed in the operational units of the undertakings belonging to the erstwhile State of Andhra Pradesh which are physically located in the present State of Andhra Pradesh. Even those few, among the petitioners, who are working in the headquarters of these undertakings at Hyderabad are being paid salaries by the Ninth Schedule legal entities under the exclusive control of the present Government of Andhra Pradesh. It does appear that, with the creation of new societies/companies/undertakings by the Government of Telangana, the earlier companies/co-operative societies/undertakings are now administered and controlled by the successor State of Andhra Pradesh. The Government of the successor State of Andhra Pradesh has constituted new Board of Directors/managing committees to administer these companies/ corporations/societies and, in case of shortfall in the revenues of these entities, it is the State of Andhra Pradesh which bears the financial burden of these entities also.

Section 74 of the 2014 Central Act stipulates that, where the assets, rights and liabilities of any body corporate carrying on business are, under the provisions of Part VII (Sections 68 to 75), transferred to any other bodies corporate which, after the transfer, carry on the same business, the losses or profits or gains sustained by the body corporate which, but for such transfer, would have been carried forward and set off under Chapter VI of the Income tax Act, shall be apportioned amongst the transferee bodies corporate in accordance with the rules made by the Central Government in this behalf and, upon such apportionment, the share of losses allotted to each transferee body corporate shall be dealt with in accordance with the provisions of Chapter VI of the said Act, as if the transferee body corporate had itself sustained such loss in a business carried on by it in the years in which those losses were sustained.

A few words in Sections 53, 68, 71 and 82 cannot be read out of context and be understood to mean something which Parliament did not intend. The task of statutory interpretation is an attempt to discover the intent of the legislature from the language used by it, such language is at best an imperfect instrument for the expression of human thought. (**K.P. Varghese**[49]). The context and the collocation of the provisions in which the Section appears cannot be ignored, because the meaning of a sentence may be more than that of the separate words, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create. (**K.P. Varghese**[49]).

It would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity." It is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of a statute. It is one of the surest index of a mature and developed jurisprudence not to make a fortress out of the dictionary, but to remember that statutes always have some purpose or object to accomplish, whose imaginative discovery is the surest guide to their meaning. A strictly literal interpretation of the provision need not be adopted, and the language can be construed having regard to the object and purpose which the legislature had in view in enacting that provision, and in the context of the setting in which it occurs. (**K.P. Varghese**[49]).

It is evident from Section 74 that Parliament was conscious that the assets and liabilities of the existing bodies corporate would, after bifurcation, be transferred to other bodies corporate carrying on the same business. The legislative intent, therefore, is not for the assets and liabilities, of the entities in the Ninth Schedule, to be transferred to the successor State Governments, but for its apportionment between the two successor States, and for such assets and liabilities to be utilised by the bodies corporate to be created by the successor States. The contention, that the legislative intent was for the assets and liabilities, of the Ninth Schedule entities, to be apportioned only between both the Governments of Telangana and Andhra Pradesh, would require us to presume that Parliament intended to bring to an end the existing corporations, for it to cease to carry on its operations after the appointed date, and only for the assets and liabilities of these

entities, including the employees of the Corporations/Companies/ Societies, to be apportioned between both the State Governments. Such a construction neither finds support from a plain reading of the provisions of the 2014 Central Act nor is it the legislative intent.

Section 70 of the 2014 Central Act is a special provision relating to the APSFC. Section 70(1) requires APSFC, on and from the appointed day, to continue to function in those areas in respect of which it was functioning immediately before that day, subject to the provisions of Section 70 and to such directions as may be issued by the Central Government. Section 70(3) provides that, notwithstanding anything contained in Section 70(1) and (2), the Board of Directors of the APSFC may, with the previous approval of the Central Government, and shall, if so required by the Central Government, convene at any time, after the appointed day, a meeting for the consideration of a scheme for the reconstitution or re-organization or dissolution, as the case may be, of the Corporation, including proposals regarding the formation of new Corporations, and the transfer thereto of the assets, rights and liabilities of the existing Corporation. Section 70(3) further provides that if such a scheme is approved at the general meeting, by a resolution passed by a majority of the shareholders, the scheme shall be submitted to the Central Government for its sanction. Section 70(4) stipulates that, if the scheme is sanctioned by the Central Government either with or without modifications, the Central Government shall certify the scheme and, upon such certification, the scheme shall, notwithstanding anything to the contrary contained in any law for the time being in force, be

binding on the Corporations affected by the scheme as well as the shareholders and creditors. Section 70(6) stipulates that nothing in Sections 70(1) & (2) shall be construed as preventing the Governments of Andhra Pradesh and Telangana from constituting, at any time on or after the appointed day, a State Financial Corporation for that State under the State Financial Corporations Act, 1951.

As is evident from Section 70(3), the Board of Directors of the APSFC are empowered to formulate a scheme, among others, for the dissolution of the APSFC, for formation of a new corporation, and the transfer of the assets, rights and liabilities of the existing Corporation to the newly formed corporations. Section 70 contains various safeguards and requires such a scheme not only to be approved by a majority of the shareholders of the Corporation, but also for its approval by the Central Government. Unlike in relation to the APSFC, for which the 2014 Central Act specifically provides for a scheme to be formulated including for the dissolution of the existing Corporation, absence of any such provision in relation to the other public sector undertakings of the existing State of A.P. shows that the 2014 Central Act does not obligate either of the successor States to dissolve the Corporations/Companies/ Societies belonging to the erstwhile State of Andhra Pradesh.

The power of the successor States to continue to carry on operations, using the assets of these Corporations/ Companies/Societies in the units located within its territorial limits, is neither circumscribed nor negated by the provisions of the 2014 Central Act, and it is for the Governments of both the Successor States to decide, in accordance with law, the mode and

manner in which these Corporate bodies should function. Any decision taken by either of the two successor States to dissolve these Corporations/Companies/Societies can only be in accordance with the provisions of the relevant laws (the Companies Act, the A.P. Co-operative Societies Act, the Societies Registration Act etc) as the 2014 Central Act does not obligate the successor State Governments to dissolve these Corporations/Companies/ Societies, or for them to cease to carry on operations, or to sell their assets. The 2014 Central Act merely provides for an orderly division of the assets and liabilities of, and the personnel employed in, different sectors within the erstwhile State of Andhra Pradesh, between the successor States of A.P. and Telangana, and nothing more.

Even when some of the provisions are more or less the same in two different statutes, still the objects to be achieved not only as set out in the preamble, but also as gathered from the antecedent history of the legislation, may be widely different. The same words may mean one thing in one context and another in a different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute. They may be helpful, but cannot be taken as guides or precedents. (**D.N.Banerjee v. P.R.Mukherjee**[89]). As noted hereinabove, unlike the Punjab, U.P, Bihar and the M.P State Reorganisation Acts, the 2014 Central Act makes a specific provision for determining the modalities for distribution of employees of public sector undertakings/corporations/other

[89] AIR 1953 SC 58

autonomous bodies. As a specific provision is made in Section 82 of the 2014 Central Act in this regard, reference to the provisions of other enactments which do not contain a similar provision is misplaced.

The 2014 Central Act relates only to the bifurcation of assets, liabilities and personnel between the two successor States, and not to the continuance or otherwise of these legal entities post bifurcation. On completion of the exercise of division of the assets, liabilities and personnel of these entities, it is for the successor State Governments to decide whether, and in what manner, these entities should be continued; and whether its existence should be brought to an end. While a separate provision is, no doubt, made in Section 70 with respect to the A.P. State Financial Corporation (APSFC), the absence of a specific provision, with respect to each of the other legal entities, does not mean that all of them have ceased to exist post bifurcation, or that the employees of these entities have become Government servants. As Section 82 makes a specific provision for employees of all these corporate bodies, the mere fact that a specific provision has been made in Section 70 with respect to the A.P.S.F.C. (a corporation established under a Central enactment) does not mean that all the other corporations, apart from A.P.S.F.C, have ceased to exist post-bifurcation with effect from 02.06.2014.

IX. DO EMPLOYEES OF PSUs BECOME GOVERNMENT EMPLOYEES AFTER BIFURCATION OF THE STATES?

Sri M. Surender Rao, Learned Senior Counsel appearing on behalf of the petitioners, would submit that a combined reading of Sections 53, 68, 71 and 82 of the 2014 Central Act make it clear that employees of P.S.Us stand distributed between the successor

States within one year of bifurcation of the State; employees of State PSU's can continue in such PSU's only for a period of one year within which the concerned corporate body is obligated to determine the mandate for distributing personnel between the Successor States; these employees do not remain PSU employees after one year; in view of Section 107 r/w Section 2(f) of the 2014 Central Act, notwithstanding anything contained in any law governing the conditions of service of Government employees or in the rules made under the proviso to Article 309 of the Constitution, employees of public sector undertakings dealt with in Section 82 of the 2014 Central Act, on distribution between the two successor States, become employees of the respective successor States; even if there is a contrary provision, in any Statute governing a statutory Corporation or under the Companies Act or the Societies Registration Act etc, employees of PSUs are still entitled to become employees of the successor States; distribution of personnel shall be presumed as it is in tune with the intendment of the 2014 Central Act; employees working in the PSU's, whose assets and liabilities were apportioned or are deemed to have been apportioned between the Successor States on location basis, must be treated as employees of the Successor State of A.P; the frame work of the 2014 Central Act does not permit or enable a public sector undertaking, governed by Sections 53, 68 & 71 of the 2014 Central Act, to continue in the areas in which it was operating prior to the appointed day; all assets, rights and liabilities are apportioned to, and vest in, the successor State; as there are no assets, rights & liabilities left, an artificial person cannot be said to be existing or continuing (for any purpose); and as employees of

PSU's have become employees of the Successor State, by operation of law (the 2014 Central Act), they are entitled to the benefit of the 2014 State Act.

Interpretation of a statute is an exercise in the ascertaining its meaning and, therefore, everything which is logically relevant is admissible. (**K.P. Varghese**[49]). It is useful, therefore, to refer to the statement of objects and reasons of the 2014 Central Act which is an Act to provide for the reorganisation of the existing State of Andhra Pradesh, and for matters connected therewith. The statement of objects and reasons, as appended to Lok Sabha Bill No.8 of 2014, refers to the need to provide for the creation of a separate State of Telangana for the betterment of the social, economic, political and other aspirations of the people of that region which had been a long standing demand; pursuant thereto, the Government of India, on 09th December, 2009, had announced that the process for formation of a separate State of Telangana would be initiated; after wide-ranging consultations on 03rd October, 2013, the Government of India had decided to bifurcate the existing State of Andhra Pradesh; the 2014 Central Act sought to give effect to the aforesaid decision; it aimed at reconstituting the existing State of Andhra Pradesh into two separate States, namely the State of Andhra Pradesh and the State of Telangana; and the proposed reorganisation would meet the democratic aspirations of the people of the Telangana region, and ensure peace, goodwill, progress and prosperity among all sections of the people of both the successor States.

The statement of objects and reasons records the salient features of the said Bill as (1) it provides for the territories of the

two successor States of Andhra Pradesh and Telangana, and necessary provisions relating to representation in Parliament and State Legislatures, distribution of revenues, apportionment of assets and liabilities, mechanism for the management and development of water resources, power and natural resources and other matters. Part-II of the 2014 Central Act relates to reorganisation of the State of Andhra Pradesh and provides, in Sections 3 and 4, for the division of the territories of the existing State of Andhra Pradesh between the States of Telangana and Andhra Pradesh. The 2014 Central Act also provides for, among others, the division of assets and liabilities, and allotment of employees between the two new States. Its object is neither to dissolve existing Corporations/Companies/Societies nor to prescribe the mode and manner of appointment of Government servants, much less to create a new mode of absorption of employees, of the Ninth and Tenth Schedule entities, into the services of the Government of A.P.

Unlike Section 82 of the 2014 Central Act, which is a specific provision relating to employees of public sector undertakings, the Uttar Pradesh, Bihar and Madhya Pradesh Reorganization Acts did not contain any such provision. Part VIII of the 2014 Central Act are the provisions relating to services. Section 76 defines the expression "state cadre" to include officers of the Indian Administrative Service, Indian Police Service and the Indian Forest Service. The cadre of these three services are required, under Section 76(2), to become two separate cadres for the States of Andhra Pradesh and Telangana from the appointed day. Section 77 makes provision for other Services which, evidently, means

services other than IAS, IPS, IFS as referred to in Section 76. Section 77(1) relates to every person who, immediately before the appointed day, was serving on a substantive basis in connection with the affairs of the existing State of Andhra Pradesh. Section 77(2) obligates the Central Government, by general or special order, to determine the successor State to which every person, referred to in Section 77(1), shall be finally allotted for service.

Section 78(1) stipulates that nothing in Section 78 or Section 77 shall be deemed to affect, on or after the appointed day (02.06.2014), the operation of the provisions of Chapter I of Part XIV of the Constitution (Articles 308 to 313) in relation to the determination of conditions of service of persons serving in connection with the affairs of the Union or any State. Under the proviso thereto, the conditions of service applicable, immediately before the appointed day in the case of any person allotted to the State of Andhra Pradesh or to the State of Telangana under Section 77, shall not be varied to his disadvantage except with the previous approval of the Central Government. Section 78(3) stipulates that the provisions of Section 77 shall not apply in relation to the members of any All-India Service. It is evident, therefore, that the persons referred to in Section 77 are those governed by Chapter I of Part XIV of the Constitution i.e only those who were appointed to public services and post in connection with the affairs of the State.

While Section 80(1) empowers the Central Government to establish advisory committees for the purpose of assisting it in regard to (a) the discharge of any of its functions under Part VIII of the 2014 Act (Section 76 to 83), and (b) to ensure fair and equitable treatment to all persons affected by the provisions of Part

VIII, separate provisions have been made for employees of public sector undertakings under Section 82 of the 2014 Central Act, and neither has the Central Government been conferred the power to establish, nor has it established, any advisory committee under Section 82 till date, for the distribution of personnel of these public sector undertakings between both the successor States. The power conferred on the Central Government under Section 81 of the Act, to give directions to the successor States of Andhra Pradesh and Telangana, is for the purposes of giving effect to the foregoing provisions of Part VIII (i.e Sections 76 to 80), and not with regards Section 82.

Absence of a provision similar to Section 82 of the 2014 Central Act, for allotment of employees of public sector undertakings, Corporations and other autonomous bodies of the erstwhile State, between the successor States, in the Punjab Re-organisation Act, necessitated employees being brought under the ambit of "liabilities". While the U.P, Bihar and Madhya Pradesh Reorganization Acts have, no doubt, provided for the Corporations, functioning in the State before its bifurcation, to continue to operate in the newly formed States, absence of such a provision in the 2014 Central Act does not mean that these Corporations are required to cease carrying on its operations nor does it obligate the successor State Governments to dissolve the existing Corporations/Companies/Societies or to sell their assets and discharge its liabilities and, thereafter, absorb employees of these Corporations/Companies/Societies/autonomous bodies into Government service. It is not even the case of the petitioners that

the 2014 Central Act contains any provision for winding up and dissolution of these Corporations/Companies/Societies.

Section 82 must be given a reasonable construction as the legislative intent, in making the 2014 Central Act, is not to bring the very existence of these Corporations/Companies /Societies to an end, but to ensure a smooth and orderly division of the assets and liabilities, and distribution of employees, of these entities between both the successor States. The Court will interpret a statute, as far as possible, agreeable to justice and reason and, in case of two or more interpretations, the one which is more reasonable and just will be adopted, for there is always a presumption against the lawmaker intending injustice and unreason. The Court will avoid imputing to the legislature an intention to enact a provision which flouts notions of justice and norms of fairplay, unless a contrary intention is manifest from the words - plain and unambiguous. A provision in a Statute will not be construed to defeat its manifest purpose and general values which animate its structure. (**Madhav Rao Jivaji Rao Scindia v. Union of India**[90]; **APSCHE**[71]).

After the orderly division of the assets and liabilities and personnel of the erstwhile State of A.P between the two successor States, which is the object of the 2014 Central Act, it is for each of the successor State Governments to then decide what it should do with the assets and liabilities apportioned to it. The provisions of the 2014 Central Act, for allotment of employees belonging to the All India Services under Section 76 and employees of other Services under Section 77, and in Section 82 for distributing

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[90] (1971) 1 SCC 85

personnel belonging to public sector undertakings between the two successor States makes it amply clear that, besides the assets and liabilities of the erstwhile State of A.P, and of its undertakings, being divided between the two successor States, officers and employees belonging to the All India Services, other Services, and Public Sector Undertakings, Corporations and other autonomous bodies were also to be divided between both the States.

In the absence of a specific provision in the 2014 Central Act for dissolution of the pre-existing Corporations/Companies/ Societies, as Sections 68 and 53 provide only for the apportionment of assets and liabilities of State Public Sector Undertakings between the two successor States, and specifically refer to the apportionment of the operational units between them, it is evident that the 2014 Central Act visualizes these Public Sector Undertakings, Corporations and other autonomous bodies continuing to carry on its operations in both the successor States, albeit as two separate legal entities, after the assets and liabilities are apportioned between them. While the manner in which the existing entities should be divided, whether it should be by dissolution of the existing legal entities and formation of two new ones or by demerger of a part of the existing legal entities and for the demerged part to be merged with newly formed entities etc, may have otherwise necessitated examination, these issues have, atleast to the extent of apportionment of assets and liabilities (apart from the headquarters of a few of these entities) and distribution of personnel, been rendered academic by the unilateral act of the State of Telangana in forming separate legal entities which have taken over the assets and liabilities and

personnel of the Units located within its territorial limits. While the question of transfer of ownership of the assets and liabilities, including the amounts liable to be paid by one of the successor States to another, may not have been resolved as yet, these unresolved issues have no bearing on the question whether or not the age of superannuation of employees of the legal entities, operating exclusively for, and with units within, the residuary State of A.P. should be extended upto 60 years.

It is evident, from a conjoint reading of Sections 73 and 82 of the 2014 Act that the successor States of Telangana and Andhra Pradesh are not required to dissolve these Corporations/ Companies/Undertakings, and the words "between the two successor States" in Section 82 can only mean between the "Public Sector Undertakings, Corporations and other autonomous bodies of the two successor States". It is a rule of interpretation, well established, that where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence". (**Maxwell's -Interpretation of Statutes, 10th Edition, page 229**; **Tirath Singh v. Bachittar Singh**[91]). The Court may, in such cases, modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction. The Court may also read into the statutory provision a condition which, though

[91] AIR 1955 SC 830

not expressed, is implicit as constituting the basic assumption underlying the statutory provision. (**K.P. Varghese**[49]; **Luke v. IRC**[92]). The consequences, of a suggested construction, cannot alter the meaning of a statutory provision but they can certainly help to fix its meaning. A statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. (**K.P. Varghese**[49]).

Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — are well settled. Under the first principle, a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. At the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or Section must be construed together and every clause of a Section should be construed with reference to the context and other clauses thereof, so that the construction to be put on a particular provision makes a consistent enactment of the whole Statute. This would be more so, if the literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. An intention to produce an unreasonable result, is not to be imputed to a statute if there is some other construction available. Where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result, the Court must "do some violence to the words" and so achieve that obvious intention and produce a

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92 1963 AC 557

rational construction. (**Luke**[92]; **Artemiou v. Procopiou**[93]; **Padma Sundara Rao v. State of T.N.**[94]).

When read in the context of Section 82, the modalities for distributing the personnel between the two successor States can only mean the modalities for distributing the personnel between the two successor State Public Sector Undertakings, Corporations and Autonomous Bodies, and not distribution of such personnel between the respective State Governments, as that would make employees of such Corporations /Undertakings/Companies etc employees of the Governments of the two successor States. Accepting the construction placed on Section 82 by Sri M. Surender Rao, Learned Senior Counsel, would mean that Parliament has, by enacting the 2014 Central Act, now prescribed a new mode of appointment to the State Services. Such a convoluted construction of Section 82 would result in absurdity for the reason that, if that was indeed the intention of Parliament, it was wholly unnecessary for a separate provision to be made for employees of public sector undertakings in Section 82, apart from Section 77 which brings within its ambit those employed in State Services. As the Legislative intent of Section 82 is to continue these employees, in the legal entities constituted by the successor States, the casus omissus in Section 82 can be supplied, and in the context of the earlier part of the very same Section, the words "***distributing the personnel between the two successor States" can be conveniently read as "distributing the personnel between the two successor State public sector undertakings, corporations and other autonomous bodies***". While this Court would, ordinarily, refrain from adding words to a

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[93] (1966) 1 QB 878
[94] (2002) 3 SCC 533

Statute as that would fall within the exclusive domain of Parliament, we are satisfied that the casus omissus must be supplied, and the creases therein ironed, to clear the cobweb of ambiguity in Section 82 and to avoid absurdity.

As noted hereinabove, the 2014 Central Act only provides for the division of the assets and liabilities of the erstwhile State of A.P., and for the distribution and allocation of Government servants and employees of public sector undertakings wholly or substantially owned by the erstwhile Government of A.P. Neither do these provisions of the 2014 Central Act have any bearing on, nor do they prescribe, the conditions of service either of Government employees or the employees of public sector undertakings. Section 107 of the 2014 Central Act relates to the power to remove difficulties, and stipulates that the provisions of the 2014 Central Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 107 gives overriding effect to the provisions of the 2014 Central Act only to the extent there is anything inconsistent therewith in any other law. Consequently only a law, which falls foul of the provisions of the 2014 Central Act, would yield to the latter, that too only to the extent of such inconsistency. As the 2014 Central Act neither provides for, nor does it relate to, the conditions of service of Government servants and employees of public sector undertakings, the question of any rule made under the proviso to Article 309, or any law providing for the conditions of service of these employees, falling foul of the 2014 Central Act does not arise.

Reading the provisions of the 2014 Central Act as a whole, it is clear that Parliament was aware and had, therefore, provided for

the consequences of the public sector undertakings, of the erstwhile Government of A.P, continuing to operate in the successor States, albeit as two separate undertakings. We, therefore, find no merit in the submission that the frame work of the 2014 Central Act does not permit or enable public sector undertakings to continue to operate after 02.06.2014 in areas in which it was operating prior to the appointed day.

The very fact that all the petitioners herein continued to work in the operational units of the public sector undertakings, located within the State of Andhra Pradesh, long after the appointed day i.e., 02.06.2014 till they attained the age of 58 years, their salaries were being paid by the respective corporations/companies/societies, and their conditions of service were regulated by the rules/bye-laws governing each of these corporate bodies, would go to show that both the successor State Governments, and those in-charge of the affairs of these legal entities, have understood the 2014 Central Act only in such a manner. As the petitioners continued to work in these organisations without demur, even after the 2014 State Act came into force w.e.f. 02.06.2014, till they filed the present Writ Petitions in the year 2016, their plea, that these public sector undertakings have legally ceased to exist and the employees of these public sector undertakings have become Government employees by virtue of the provisions of the 2014 Central Act, is merely an afterthought and a misguided attempt to surreptitiously gain entry into Government service. These contentions, therefore, necessitate rejection.

X. G.O.Ms.No.112 - IS IT VALID:

It is contended, on behalf of the petitioners, that the earlier G.O.Ms.No.27 dated 30.06.2015, whereby the age of super-annuation of employees was enhanced to 60 years, was issued with the concurrence of the Finance Department; the Finance Department cannot, therefore, once again issue G.O.Ms.No.112 dated 18.06.2016 keeping the earlier G.Os in abeyance; and as G.O.Ms.No.27 dated 30.06.2015 was issued by the Social Welfare Department with the concurrence of the Finance Department, the Finance Department of the State Government alone cannot issue G.O.Ms.No.112 dated 18.06.2016 without the concurrence of the Social Welfare Department; G.O.Ms.No.112 18.06.2016 suffers from the vice of non-application of mind, and non-consideration of relevant factors; the reasons indicated in G.O.Ms.No.112 dated 18.06.2016 has no nexus to the issue of the age of superannuation of employees of Societies; it is necessary in the academic interest of the students, studying in the schools run by societies wholly or substantially owned and controlled by the State Government, that G.O.Ms. No.112 dated 18.06.2016 is set aside; and since the said G.O.Ms. No.112 dated 18.6.2016 only seeks to keep the earlier Government Orders in abeyance, the earlier Government Orders, extending the enhanced age of superannuation to employees of the societies, would stand revived.

On the other hand the Learned Advocate General for the State of Andhra Pradesh would submit that, considering all relevant aspects, the express provisions of the 2014 Central Act, and to avoid pandemonium, the residuary State of Andhra Pradesh issued G.O.Ms.No.112 dated 18.6.2016 in respect of Schedule IX

and X Institutions where it has interest and shares; the 2014 Central Act requires the residuary State of Andhra Pradesh to exercise control over these Institutions; the purport of G.O.Ms.No.112 is that, after the prescribed procedure under the 2014 Central Act is completed with regard to demerger of the Boards and division of assets & liabilities, the business prospects of the entities can be assessed; after addressing the requirement of restructuring these entities if need be, the residuary State of Andhra Pradesh would be in a position to take a policy decision whether or not to enhance the age of superannuation of employees in these Institutions; the subject G.O. keeps the earlier orders in this regard in abeyance till then; Schedule IX and X Institutions, as on date, are held jointly by both the States; only for ensuring service delivery, these institutions are being managed by the respective adhoc boards; in reality these Institutions/ Entities are not yet legally vested in any one State; the legislative competence of the residuary State of Andhra Pradesh, in respect of these entities, is circumscribed by the provisions of the 2014 Central Act, more particularly in matters concerning employees; G.O.Ms.No.112 dated 18.6.2016 is legal and valid; and the petitioners have no subsisting legal right to seek enhancement of their age of superannuation.

G.O.Ms. No.112 dated 18.06.2016, the validity of which is under challenge in several of these Writ Petitions, refers to the 1984 Act as amended by the 2014 State Act, and to the persons to whom the Act is applicable in terms of clauses (i) to (iv) of Section 1(2) thereof. It then refers to the order issued by the Water Resources Department in G.O.Ms.No.101 dated 23.09.2015

whereby the age of superannuation of employees working in the Andhra Pradesh State Irrigation Development Corporation Limited was extended to 60 years subject to fulfilment of the conditions mentioned therein. It also refers to the Memo dated 26.11.2015 whereby all Secretariat Departments, including the Water Resources Department, were advised to keep the orders, if any issued for enhancement of the age of superannuation from 58 to 60 years of employees of Public Sector Undertakings, under their administrative control, in abeyance with immediate effect till orders, formulating the policy regarding extension of the age of superannuation of employees of the Public Sector Undertakings in the State of Andhra Pradesh, are issued by the Government.

Reference is made therein to the Circular Memo dated 07.12.2015 whereby the managements of Public Sector Undertakings and Institutions, included in the IX and the X Schedules of the 2014 Central Act, were directed to take up the prescribed process prior to submitting proposals to the Government for any change in the age of superannuation of their employees. The G.O also refers to the Memo dated 23.12.2015 advising that the process, as stipulated, be taken up prior to submitting proposals to the government for any change in the age of superannuation, and to G.O.Ms.No.2 dated 07.01.2016 whereby orders were issued keeping the orders issued in G.O.Ms.NO.101 dated 23.09.2015 in abeyance. Thereafter G.O.Ms.No.112 dated 18.06.2016 records that the Government, having taken stock of all the aforesaid developments and after careful consideration, had ordered that the enhanced age of superannuation not be made applicable to employees of Public Sector Undertakings and

Institutions, listed in the IX and X Schedule of the 2014 Central Act, until the matter of division of assets and liabilities of the institutions, between the States of Andhra Pradesh and Telangana, was settled and allotment of employees, between the two States, is finalised for these public sector undertakings/institutions; the Government would be in a position to take a policy decision on the matter only after such process is completed in all respects; and orders issued if any, by any department or public sector undertakings/institutions, should be kept in abeyance with immediate effect.

(a). EXECUTIVE POWER IS EXERCISED BY THE STATE GOVERNMENT AND NOT BY ITS DEPARTMENTS:

The Executive power of the State is vested in the Governor under Article 154 of the Constitution, and is required to be exercised by him either directly or through officers subordinate to him in accordance with the provisions of the Constitution. Article 162 extends the Executive power of the State to matters with respect to which the legislature of the State has the power to make laws, and is subject to the provisions of the Constitution. The executive power under Articles 154 read with Article 162 is exercised by the State Government, and not by any of its individual departments which do not have an identity distinct from the State Government. The mere fact that an order is issued by the Government, through a particular department, does not make it any less an order of the Government than the one issued by two or more departments together. Concurrence of the finance department, in issuing a G.O, is ordinarily obtained in cases where the Government is required to incur expenditure. The mere fact that a Government order was earlier issued by one of the

government departments with the concurrence of the finance department, does not disable the State Government later from changing its decision.

(b). EXTENDING THE AGE OF SUPERANNUATION FROM 58 TO 60 YEARS IS A MATTER OF POLICY:

A decision whether the age of superannuation should be 58 or 60 years is a matter of policy, and such policy decisions can be changed by the Government for just and valid reasons. The power to lay policy includes the power to withdraw the earlier policy or to change it. (**Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd.,**[95]). The action of the Government cannot be declared illegal, arbitrary or ultra vires the provisions of the Constitution merely on the ground that the earlier policy had been given up, changed or not adhered to. It cannot also be attacked on the plea that the earlier policy was better suited to the prevailing situation. (**Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal**[96]). Whether the policy should be altered or not is a matter for the Government to decide. (**Federal Power Commission v. Hope Gas Co.,**[97]). When the Government is satisfied that a change in the policy is necessary in the public interest, it would be entitled to revise the policy and lay down a new policy. It is equally entitled to issue or withdraw or modify the policy. The Court would not bind the Government to a previous policy. (**P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India**[98]). The Court cannot strike down a policy merely because there is a variation. Consistency is not always a virtue. What is important is to know whether irrational and extraneous factors foul. There can be no quarrel if a policy is

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[95] (2011) 1 SCC 640
[96] (2007) 8 SCC 418
[97] 320 US 591, 602 (1944)
[98] (1996) 5 SCC 268

revised. The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and vice versa. (**Tamil Nadu Education Deptt. Ministerial & General Subordinate Services Assn. v. State of T.N.**[99]). Unless any illegality is committed in the execution of the policy, or the same is contrary to law or malafide, a decision bringing about change cannot, per se, be interfered with by the Court. (**BALCO Employees' Union (Regd.) v. Union of India**[100]; **Irrigation Development Employees Association v. Govt. of A.P.**[101])

The right of the State or of its instrumentality to change its policy decisions from time to time under changing circumstances cannot be disputed, and it is an integral part of democratic process. This Court in the exercise of its jurisdiction under Article 226 of the Constitution of India, while considering the validity of a Governmental policy, cannot weigh the pros and cons of the policy or scrutinise it to test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on even sound reasoning. (**Irrigation Development Employees Association**[101]). One of the inputs in formulating and reformulating Governmental policies may be availability or lack of resources. Since the purse of the State is not under the control of the Court, it will not transgress into the field of policy decision. (**Irrigation Development Employees Association**[101]; **State of Punjab v. Ram Lubhaya Bagga**[102]; **Narmada Bachao Andolan v.**

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[99] (1980) 3 SCC 97
[100] (2002) 2 SCC 333
[101] 2004(2) ALD 599 (DB)
[102] AIR 1998 SC 1703

Union of India[103] and **Union of India v. Tejram Parashramji Bombhate**[104]).

In **Rajesh Chander Sood**[37] the Supreme Court held that the State Government, which had introduced 'the 1999 Scheme', had the right to repeal the same; employees of corporate bodies, who were extended the benefits of 'the 1999 Scheme', were not employees of the State Government; the 1999 Scheme' was, therefore, just a welfare scheme introduced by the State Government with the object of ameliorating the financial condition of employees who had rendered valuable service in State owned corporations; when and how much is to be paid as wages (or allowances) to employees of an organization is also a policy decision; so also, post-retiral benefits; all these issues fell in the realm of executive determination; the Court had no role therein; the conditions of service including wages, allowances and post-retiral benefits of employees of corporate bodies, must necessarily be determined administratively, on the basis of relevant factors; and financial viability is an important factor in such consideration.

(c). PREMISE, ON WHICH G.O.Ms. No. 112 DATED 18.06.2016 IS BASED, IS FLAWED:

It is for each of the Companies/corporations/societies, wherein the petitioners are employed, to extend the age of superannuation of its employees, if they so choose, by amending the applicable rules. While the approval of the State Government may be required for such an amendment, in view of the prescription in the Articles of Association/Rules/ Byelaws framed

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[103] (2000) 10 SCC 664
[104] (1991) 3 SCC 11

by each of these legal entities requiring prior approval of the Government to be obtained, that may not justify the State Government issuing an omnibus G.O such as G.O.Ms. No.112 dated 18.06.2016, more so as the premise on which it is based is evidently invalid since the Corporations/Societies/Companies of the composite State of Andhra Pradesh no longer operate in their original form and, consequent upon the Government of Telangana establishing new companies/societies, the erstwhile corporations/ companies/societies (except a few, including the A.P. State Financial Corporation) are being administered by the Board of Directors appointed exclusively by the Government of A.P, and are carrying on their operations within the present State of A.P. We find considerable force in the submission, urged on behalf of the petitioners, that G.O.Ms. No.112 dated 18.06.2016 was issued by the State Government without considering all relevant aspects. G.O.Ms. No.112 dated 18.06.2016 was issued on the erroneous premise that the corporate bodies, referred to in Section 82 of the Act, still continue to remain jointly owned and controlled by both the State Governments. The reasons for refusal to extend the age of superannuation, as referred to in G.O.Ms. No.112 dated 18.06.2016, has no nexus to the decision required to be taken regarding enhancement of the age of superannuation.

The concept of an adhoc board being appointed only for service delivery is alien to the provisions of the Companies Act or the statutory enactments whereunder some of these Corporations are created or the enactments under which some of these societies have been established. The State Government exercises the power, to appoint a Board of Directors/Managing Committees of these

bodies corporate, as the sole or a majority shareholder of these entities or in terms of the law governing them, and the Board of Directors/Managing Committees so constituted are required to discharge their functions in accordance with the Memorandum of Association/Articles of Association/bye-laws/rules applicable to them. The submission of the Learned Advocate General, that these are adhoc Boards constituted only for service delivery, does not therefore merit acceptance. As the very premise on which G.O.Ms. No.112 dated 18.06.2016 is based is not valid, the said G.O. must be, and is accordingly, set aside.

(d). AGE OF SUPERANNUATION OF EMPLOYEES IS TO BE PRESCRIBED BY THE EMPLOYER BY WAY OF RULES OR REGULATIONS:

The G.Os issued earlier would not automatically revive, on G.O.Ms. No.112 dated 18.06.2016 being set aside, nor would it require employees of these corporate bodies to be continued in service till they attain the age of 60 years. The terms and conditions of the service of an employee of a public sector undertaking can be altered unilaterally by the corporate body concerned, just as the conditions of service of Government servants can be unilaterally altered by way of rules made under the proviso to Article 309 of the Constitution.. **(Roshan Lal Tandon**[19]; **State of U.P. v. Hirendra Pal Singh**[105]; **B.S. Vedera v. Union of India**[106]; **State of Jammu and Kashmir v. Triloki Nath Khosa**[107]; **B.S. Yadav v. State of Haryana**[108] and **State of J&K v. Shiv Ram Sharma**[109]). In government services, where the terms and conditions of service are governed by statutory provisions or

[105] (2011) 5 SCC 305
[106] AIR 1969 SC 118
[107] (1974) 1 SCC 19
[108] AIR 1981 SC 561
[109] (1999) 3 SCC 653

rules, the legislature/Government is competent to enhance or reduce the age of superannuation. (**Hirendra Pal Singh**[105]).

Not to provide for an age of retirement at all would be contrary to public interest, because the State or its instrumentalities cannot afford the luxury of allowing its employees to continue in service after they have passed their peak. (**Yeshwant Singh Kothari v. State Bank of Indore**[110]; **K. Nagaraj v. State of A.P.**[111]). The proposition that there ought to be an age of retirement in services is widely accepted as reasonable and rational. The fact that the stipulation, as to the age of retirement, is a common feature of all services establishes its necessity, no less than its reasonableness. Public interest demands that there ought to be an age of retirement in all services. A common scheme of general application governing superannuation is evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society, and the need to open up promotional opportunities to employees at the lower levels early in their career. Inevitably, the employer has to counter-balance conflicting claims while determining the age of superannuation. On the one hand, services under the State or its instrumentalities cannot be deprived of the benefit of the mature experience of senior employees. On the other hand, a sense of frustration and stagnation cannot be allowed to generate in the minds of the junior members of the services, and the younger sections of the society. The balancing of these conflicting claims of different segments of society involves minute questions of policy. These claims involve considerations of varying

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110 1993 Supp (2) SCC 592
111 AIR 1985 SC 551

vigour and applicability. Often, the Court has no satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of a given case. While resolving the validity of policy issues like the age of retirement, it is not proper to put the conflicting claims in a sensitive judicial scale, and decide the issue by finding out which way the balance tilts. That is an exercise which the administrator has to undertake. (**K. Nagaraj**[111]).

Courts would not issue a writ to enforce the earlier G.Os, whereby administrative instructions were issued to enhance the retirement age, as it does not have the force of law. (**Sureshchandra Singh v. Fertilizer Corpn. of India Ltd.,**[112]). Determination of the age of superannuation is a matter of policy of the State Government or the competent authority in a corporation, and the High Court, under Article 226 of the Constitution, would not determine the age of superannuation. (**State of U.P. v. Dayanand Chakrawarty**[113]). The age of superannuation, governing the length of service of officers and employees, may be suitably altered in appropriate circumstances, even by reducing the age so as to affect serving employees, and no exception can be taken thereto. (**P. Venugopal**[13]).

If a rule of retirement can be deemed to deprive a person of his right to livelihood, it will be impermissible to provide for an age of retirement at all. That will be contrary to public interest because the State or its instrumentalities cannot afford the luxury of allowing its employees to continue in service after they have passed the point of peak performance. Rules of retirement do not take

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[112] (2004) 1 SCC 592
[113] (2013) 7 SCC 595

away the right of a person to his livelihood: they limit his right to hold office to a stated number of years. (**K. Nagaraj**[111]). A government servant/employee of a public sector undertaking has no right to continue in service beyond the age of superannuation and, if he is retained beyond that age, it is only in exercise of the discretion of the Government or the public sector undertaking concerned. (**State of Assam v. Basanta Kumar Das**[114]). Once the age of superannuation is fixed it may be open to the employer, for special reasons, to continue in its employment an employee who has passed that age; but it is inconceivable that when the age of superannuation is fixed, it should be in the option of the employee to continue in service thereafter. (**Guest Keen Williams (P) Ltd. v. P.J. Sterling**[115]).

Fixing an age of retirement does not amount to termination of services. (**N. Lakshmana Rao**[1]). There is no provision which takes away the power of the Government or the public sector undertaking to increase or reduce the age of superannuation. (**Bishun Narain Mishra v. State of U.P.**[116]; **N. Lakshmana Rao**[1]). Application of the legislative policy decision, to increase the age of retirement of Government employees, to employees of public sector enterprises also depends on many factors that should be taken into account in the light of the peculiar characteristics of each company or corporation or department. It is for the concerned authority to make necessary changes in the rules and regulations after taking into account all relevant aspects. (**Sureshchandra Singh**[112]).

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[114] (1973) 1 SCC 461
[115] (1960) 1 SCR 348 : AIR 1959 SC 1279
[116] AIR 1965 SC 1567

Let us now examine the judgments relied upon on behalf of the petitioners. In **B. Prabhakar Rao v. State of A.P.,** [117], the age of superannuation was 55 years to begin with. The Government of Andhra Pradesh had raised the age of superannuation from 55 years to 58 years in the year 1979. In February 1983, the Government decided to reduce the age of superannuation. In order to give effect to their policy of reversal, i.e. the policy of reducing the age of superannuation from 58 to 55, the Government amended Rule 56(a) of the Fundamental Rules and Rule 231 of the Hyderabad Civil Services Rules by substituting the figure '55' for the figure '58', and by making a special provision that those who had already attained the age of 55 years, and were continuing in service beyond that age on February 8, 1983, shall retire from service on the afternoon of February 28, 1983.

After the notifications reducing the age of superannuation from 58 to 55 were issued, a large number of Government employees, employees of public sector corporations and teachers working under various local authorities filed writ petitions before the Supreme Court as well as in the High Court of Andhra Pradesh challenging the vires of the provisions reducing the age of superannuation. The impugned provisions were upheld by the Supreme Court, and all the writ petitions were dismissed. In the meanwhile, there were amendments to the legislation, once more raising the age of superannuation. The Andhra Pradesh Legislature enacted the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act 23 of 1984. On August 23, 1984, the Andhra Pradesh Public Employment (Regulation of Age of

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[117] 1985 Supp SCC 432

Superannuation) Act 23 of 1984 was amended by the promulgation of Andhra Pradesh Ordinance 24 of 1984. Andhra Pradesh Ordinance 24 of 1984 was replaced by Act 3 of 1985. By Section 2 of the Amending Act, the words “fifty-five years” were substituted by the words “fifty-eight years” in Section 3(1) and Explanation II(a) of the principal Act. Section 4 of the Amending Act stipulated that the provisions of Section 2 of this Act shall not apply to persons who attained the age of superannuation in pursuance of the notifications issued in GOMs. No. 36, Finance and Planning (Finance Wing-FR I) Department, dated February 8, 1983, or in pursuance of the provisions of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, as in force prior to the commencement of this Act. The civil servants, employees of public sector corporations and teachers working under various local authorities, who claimed the benefit of the enhanced age of superannuation, approached the Supreme Court.

It is in this context that the Supreme Court held that Section 4(1) of Act 3 of 1985 could easily be brought to conform to the requirements of Article 14 of the Constitution by striking down or omitting the naughty word “not” from the provision. To make matters clear, and to put them beyond dispute, the Supreme Court gave certain directions in the exercise of its powers under Articles 32 and 142 of the Constitution. All employees of the Government, public corporations and local authorities, who were retired from service on the ground that they had attained the age of 55 years by February 28, 1983 or between February 28, 1983 and August 23, 1984 were directed to be reinstated in service provided they would not be completing the age of 58 years on or before October 31,

1985. All employees who were compelled to retire on February 28, 1983 and between February 28, 1983 and August 23, 1984, and who were not eligible for reinstatement under the first clause, were held entitled to be paid compensation equal to the total emoluments which they would have received, had they been in service, until they attained the age of 58 years, less any amount they might have received ex gratia or by way of pension etc. or under the interim orders of the Supreme Court; and they would be entitled to consequential retiral benefits.

The directions issued by the Supreme Court, in **B. Prabhakar Rao**[117], was in the exercise of its jurisdiction under Article 142 of the Constitution of India. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, in writ proceedings, is circumscribed by limitations which cannot be transgressed on the whim or subjective sense of justice varying from Judge to Judge. (**State of Punjab v. Surinder Kumar**[118]). The power which is available to the Supreme Court under Article 142 is not available to the High Courts. (**Chairman, Grid Corpn. Of Orissa Ltd (Gridco) v. Sukamani Das**[119]). The power conferred on the High Court, under Article 226 of the Constitution of India, is not on par with the constitutional jurisdiction conferred upon the Supreme Court under Article 142 of the Constitution of India. (**State of U.P. v. Johri Mal**[120]; **State of H.P. v. A parent of a Student of**

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[118] (1992) 1 SCC 489
[119] (1999) 7 SCC 298
[120] (2004) 4 SCC 714

Medical College[121] and **Asif Hameed v. State of J&K**[122]). Although the High Court may pass an order for doing complete justice to the parties, they do not have the power akin to Article 142 of the Constitution of India. (**Johri Mal**[120]; **Guruvayoor Devaswom Managing Committee v. C.K. Rajan**[123]; **B.C. Chaturvedi v. Union of India**[124]). Exercise of the extraordinary jurisdiction, constitutionally conferred on the Supreme Court under Article 142(1) of the Constitution, can be of no guidance on the scope of Article 226. (**State of Haryana v. Naresh Kumar Bali**[125]; **State of H.P. v. Mahendra Pal**[126]). As no such power is available to this Court, while exercising jurisdiction under Article 226 of the Constitution of India, it would not be open to us to issue directions, similar to those in **B. Prabhakar Rao**[117], or to direct that the petitioners should be continued in service till they attain the age of 60 years.

In **K. Veera Chary v. High Court of Andhra Pradesh, rep., by Registrar Vigilance, Hyderabad**[127], certain Judicial Officers in the rank of District Judges Grade-II, and governed by the Andhra Pradesh State Higher judicial Service Rules, 1958, invoked the jurisdiction of this Court aggrieved by the action of the Government of Andhra Pradesh in issuing G.O.Ms. No. 87 dated 28. 07. 2007, and G.O.Ms. No. 32 dated 07.04.2007, on the recommendation of the High Court of Andhra Pradesh, and in compulsorily retiring them from service with effect from last day of the month in which the orders were passed. These orders were

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[121] (1985) 3 SCC 169
[122] 1989 Supp (2) SCC 364
[123] (2003) 7 SCC 546
[124] (1995) 6 SCC 749
[125] (1994) 4 SCC 448
[126] 1995 Supp (2) SCC 731
[127] 2008(5) ALT 115 (F.B)

issued in the purported exercise of the powers conferred under the first proviso or the second proviso to sub-section (1a) of Section 3 of the Andhra Pradesh Public Employment (Regulation of Age of superannuation) Act, 1984 as amended by A. P. Act No. 42 of 2006. The first proviso empowered the State Government to compulsorily retire members of the judicial service at the age of fifty years or fifty five years or fifty eight years or thirty three years of qualifying service, if such officer was found not fit and eligible to be continued in service. The second proviso empowered the State Government to retire an officer in public interest after giving three months notice in writing or three months pay in lieu of such notice. Among the questions which arose for consideration was whether the first proviso to Sec. 3 (1a) of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, as amended by A. P. Act No. 42 of 2006, in so far as it enabled the Government to compulsorily retire a judicial officer on attaining the age of fifty years or fifty five years, if he was found not fit and eligible to be continued in service, was ultra vires and violative of Articles 14 and 311 (2) of the Constitution of India.

A Full bench of this Court, in **K. Veera chary**[127], held that the 1984 Act applied to all persons appointed to public services and posts in connection with the affairs of the State; members of the Higher Judicial Service and State Judicial Service were also governed by the 1984 Act regulating the age of superannuation; Section 3(1A) of the 1984 Act applied to judicial officers and, thereunder, all persons governed by the 1984 Act, including judicial officers, should retire at the age of 58 years; when no review at the age of 50 or 55 years, for the purpose of continuing

them in service thereafter, is permissible for other public servants, subjecting judicial officers alone for such mid-career review violated Article 14 of the Constitution of India. Unlike Judicial Officers who are governed by the provisions of the 1984 Act, the petitioners herein are all employees working in Corporations/Companies/autonomous bodies including Societies listed in the IX and X Schedules to the 2014 Central Act to whom the provisions of the 1984 Act are not applicable. Reliance placed on **K. Veerachary**[127] is, therefore, misplaced.

XI. IT IS ONLY IF THE ARTICLES OF ASSOCIATION/STATUTORY REGULATIONS/BYE-LAWS/RULES OF THE IX AND X SCHEDULE ENTITIES PRESCRIBE THE AGE OF RETIREMENT AS 60 YEARS, CAN ITS EMPLOYEES BE CONTINUED IN SERVICE TILL THEN:

It is contended, on behalf of the petitioners, that, by virtue of the power conferred under the Articles of Association of State Public Sector Undertakings/Corporations, the Government is required to consider the resolutions passed by the Board of Directors, and take a decision bearing in mind the justification of the proposal sent by the Board, and keeping in view the interest of the Companies/Corporations; the State Government should be directed to consider the resolutions sent by the Board of Directors of different PSUs, proposing enhancement of the age of retirement of their employees, keeping in mind the reasons for raising the age of retirement of Government employees, without reference to extraneous aspects like bifurcation of employees post division of the State, and division of the assets and liabilities between the two States etc; such aspects were not taken into consideration while raising the age of retirement of government employees; almost all the PSUs are profit making, self sufficient and dividend paying

companies; no financial burden will lie on the State Government for enhancing the age of retirement, since the Government does not fund the PSUs; the Service rules of some of the Corporations stipulate that the Board has the ultimate authority to take a decision with regards service conditions of its employees and do not speak of obtaining approval from the Government as a pre-requisite for implementation of its decision; though these corporations have the power to take decisions, they have only been submitting proposals to the Government; these Corporations have, all the while, been adopting service conditions applicable to government employees, to its employees also; on 13-08-2014, the Government of Telangana issued increments to employees working in Telangana, while the State of A.P issued proceedings enhancing the age limit of superannuation to 60 years; proceedings were issued by the Telangana State Public Sector Corporations granting Telangana increment to those employees allotted to the Telangana Wing of the State Corporations; having enhanced the age of superannuation to (60) years for its employees, the Government is not entitled to interfere with the decision of the Directors, and deny such benefit to the employees working in these corporations; it is excessive exercise of powers by the Government as a shareholder, and amounts to colourable exercise of power; it is in violation of Article 14 of the Constitution of India, and is arbitrary and discriminatory; allocation of employees, and the division of assets and liabilities of the Government, is still to be resolved by and between the two State Governments; pending resolution of such disputes, the Government of AP has enhanced the age of superannuation of its employees; however, in the case of PSUs, a

different stand is being taken; by the time, the State of A.P issued the 2014 State Act on 27.06.2014, division of assets and liabilities, and allocation of State Government employees, between the two States, had not been completed; yet the said Act was extended to employees who were working in the State of A.P. by that date; and the action of the Government is, therefore, discriminatory.

Several enactments creating these statutory corporations, the Articles of Association of these Companies incorporated under the Companies Act, and the bye-laws of these Societies require the Board of Directors/Managing Committees to obtain approval of the State Government before implementing the policy decisions taken by them. For instance, Article 124 of the Articles of Association of the A.P. Forest Development Corporation provides that:-

> " notwithstanding anything contained in any of these Articles, the Government of Andhra Pradesh may, from time to time, issue such directives as they may consider necessary in regard to finances and the conduct of the business and affairs of the Corporation and the Directors shall duly comply with and give effect to the directives immediately. In particular the Government may have the powers to call for any information, approve plans, budgets, foreign collaborations, new business and activity, new projects over and above the limits specified by the Government. Further, the following powers / acts are vested only in the Government to approve the staffing patern, rules for recruitment, promotions and disciplinary actions, etc. and pay scales, allowances and all other payments."

Likewise, several Companies and Statutory Corporations have framed Rules, in the exercise of the powers conferred on them under the Articles of Association or the provisions of the Act, prescribing the age of superannuation. For instance Rule 21 of the "A.P. State Housing Corporation Limited General Service Rules", framed in 1998, governs the age of superannuation and

retirement, and reads as follows:

"21. SUPERANNUATION AND RETIREME:NT:
I) Every employee except Class IV shall retire from service of the Corporation on attainment of the age of fifty eight years and the Class IV employees however shall retire on attaining the age of sixty years.

ii) All the employees of the Corporation shall retire on attaining the age of superannuation with effect from the afternoon of the last day of the month in which their date of retirement falls.

However, the employees whose date of birth falls on the first of the month, shall retire on attaining the age of superannuation on the afternoon of the last day of the preceding month".

Clause 15 of the A.P. State Warehousing Corporation Employees Regulations deals with the age of retirement, and reads thus:-

i. "Every employee shall retire on completion of the age of fifty eight years". (The amendment shall be deemed to have come into force with effect from 23rd August, 1984).

Provided that the Board may, in the interests of the Corporation extend the period of service of an employee beyond the age of fifty eight years for such period as may be considered necessary.

Provided further that no such extension shall be given beyond the age of sixty years."

Even the resolutions passed by the current Board of Directors of several of the public sector undertakings, presently carrying on operations in the residuary State of Andhra Pradesh, enhancing the age of superannuation of its employees from 58 to 60 years, require proposals to be sent to the State Government for its approval. For instance, the Board of Management of the A.P. State Minorities Corporation, by its Resolution No.128-13 in its meeting held on 28.03.2016, amended Rule 16 (a) "RETIREMENT"' of the A.P. State Minorities Finance Corporation Service Conduct discipline, and appeal Rules to the following effect:·

"All employees shall retire from the employment of Corporation on reaching the superannuation age of 60 yei:µ-s including Attenders, Watchman-Cum-Sweepers and other

employees in equivalent posts. The age as put in the employees' application during appointment (Which shall be the date attested in the Matriculation / School Leaving Certificate / Secondary School Certification) shall be the basis for retirement."

"RESOLVED FURTHER THAT, the V.C. & Managing Director of the Corporation is hereby authorized to submit the proposal to Government of Andhra Pradesh for the above said purpose."

It is evident, therefore, that the approval which the Board of Directors/Managing Committees of these Corporations/ Companies/Societies, have now sought from the State Government, for enhancing the age of superannuation, is in terms of the statutory provisions/Articles of Association/bye-laws which require approval of the Government to be obtained in this regard. Exercise of power by the Government, in terms of the Articles of Association/bye-laws/Statutory provisions, cannot be termed excessive or a colourable exercise of power.

Section 291(2) of the Companies Act, 1956 stipulates that no regulation made by the Company, in its general meeting, shall invalidate any prior act of the Board which would have been valid if that regulation had not been made. While the shareholders of the Company have the power, under Section 291(2) of the Companies Act, 1956, to make regulations which would thereafter bind the Board of Directors, the said power to make regulations cannot be exercised retrospectively or to invalidate an earlier act of the Board of Directors. The power conferred on the shareholders under Section 291(2) is to make regulations prospectively, and not to enforce it retrospectively and thereby annul any earlier decision of the Board of Directors in this regard.

The power to make regulations under Section 291(2) cannot be equated to the conditions stipulated in the Articles of

Association of these PSUs requiring the Board of Directors to obtain approval of the Government in matters of policy, including those relating to the conditions of service of its employees. The obligation of the Board of Directors, to obtain approval of the Government, would only mean that any decision they may take is tentative, and is subject to approval being accorded thereto by the State Government. In taking a decision, whether or not to grant approval to the proposal submitted to it by the Board of Directors of each of these companies, corporations and societies, the State Government is not exercising its powers under Section 291(2), nor are any regulations being made annulling any earlier decision of the Board of Directors.

The mere fact that the Telangana State Government has extended the benefit of increments, given to its employees earlier, to employees of its Public Sector Undertakings, does not obligate the Government of Andhra Pradesh to do likewise, or to enhance the age of superannuation of employees of State Public Sector Undertakings upto the age of 60 years merely because it has extended the said benefit to the government servants allotted to it. The benefits given to employees of one State cannot form the basis of employees of another State claiming a similar benefit on the touchstone of Article 14 of the Constitution of India. Employees working in two different States constitute two separate classes of employees. Likewise, employees of the Government of Andhra Pradesh, and employees of wholly owned Public Sector Undertakings of the Government of Andhra Pradesh, constitute two different and distinct classes and, consequently, the action of the State Government, treating them differently, is neither

arbitrary nor discriminatory nor, for that matter, in violation of Article 14 of the Constitution of India.

Even otherwise, it is not even the case of the petitioners that the Telangana State Government has enhanced the age of superannuation of its employees from 58 to 60 years, much less to employees of its Public Sector Undertakings. As noted hereinabove, employees of Public Sector Undertakings, even if they be wholly owned by the State Government, are not Government employees and constitute a class distinct and separate from them. The benefits extended to, and the restrictions placed on, its employees by the Government of A.P. does not automatically apply to employees of its State Public Sector Undertakings nor is the State Government obligated either to extend such benefit or impose such burden on the latter.

While the State Government is required to consider the proposals submitted by the Companies/Corporations/Societies and take a decision regarding enhancement in the age of superannuation, with respect to each of these legal entities, on the merits of each proposal, no mandamus can be issued to the Government to enhance the age of superannuation of the employees, of these legal entities, from 58 years to 60 years. The decision whether or not the age of superannuation, of the employees of these corporate bodies, should be enhanced would depend on several factors, qua each of these corporation bodies, such as its financial condition, its need etc. While the Government of A.P. may not be justified in treating all these corporate bodies alike, that does not justify a mandamus being issued directing

them to take a uniform decision regarding the employees of all these corporate bodies.

The decision of the Board of Directors/Managing Committees to request the State Government to enhance the age of superannuation is tentative and not final. It is subject to the proposal being accepted by the State Government. While some of these undertakings appear to be profit making, some appear to be fully funded by the State Government. The question whether enhancing the age of superannuation would increase its financial burden, which it finds it difficult to bear, are also matters to be considered by the State Government. These factors would vary from one undertaking to another.

Suffice it to make it clear that the mere fact that the issue of change in the ownership of the assets and liabilities, of these IX and X Schedule entities, has not yet been finally resolved is extraneous to the decision to be taken by the State Government on whether or not the age of superannuation of employees of these undertakings should be extended from 58 to 60 years. That does not however mean that, merely because the State Government had enhanced the age of Government employees from 58 to 60 years, even before the assets and liabilities of the erstwhile State of Andhra Pradesh were divided and allotted to both the successor States, they are also obligated to automatically enhance the age of superannuation of employees of corporate bodies, referred to in Section 82, even without examining the need of each of these corporate bodies to continue the services of such employees beyond 58 years.

XII. OTHER CONTENTIONS:

(a). VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

It is contended, on behalf of the petitioners, that the sudden retirement of the petitioners would be unfair and unjust as they had no prior notice/opportunity to submit their documents for grant of pension which, as per the prevalent instructions, would have to be submitted six months prior to the date of retirement; there are already about 40% vacancies in the teaching cadre of the Societies and sudden en-masse retirement of teaching staff, pursuant to G.O.Ms.No.112, would derail the proper running of the schools/institutions; and it is also in the academic interest of students that the petitioners are not forced to retire at this stage.

The age of retirement of employees of these Corporations/ Companies/Societies are prescribed under the Rules/Regulations/ Bye-laws framed by these legal entities. As the Rules have not been amended, even if it be for the reason that the State Government has not accorded approval thereto, no employee has the right to be continued in service beyond the age of retirement stipulated therein, nor is he required to be put on notice before he is sought to be retired. As the proposal to amend the Rules has not yet been approved by the State Government, failure on the part of the petitioners to submit documents for grant of pension would not, by itself, necessitate their being continued in service till they attain the age of 60 years. The huge vacancy in the cadre strength of these corporations/societies, and the academic interests of students, studying in the educational institutions run by the respondent-societies, being affected thereby, are also factors which the Government would take into consideration in deciding whether

or not to extend the age of superannuation of these employees from 58 to 60 years. These are all matters for the Government to consider, and not for this Court to determine. Vacancies caused, as a consequence of employees retiring from service, are, ordinarily, filled up either by direct recruitment or by promotion, and while the Government may, for just and valid reasons, also choose to retain the service of existing employees upto the age of 60 years, that does not confer a right on them to claim that their services should invariably be extended till then.

The plea of violation of principles of natural justice needs only to be noted to be rejected. The petitioners were well aware that the age of superannuation, in terms of the rules and regulations governing these corporations/companies/societies/ autonomous bodies, was only 58 years. Nothing prevented them from submitting their applications, for grant of pension/terminal benefits, earlier. While any delay in processing such applications may not be justified, that, by itself, would not confer any right on the petitioners to claim that they should be continued in service till the age of 60 years.

(b). NON-JOINDER OF NECESSARY PARTIES:

Learned Advocate General would submit that the Writ Petitions also suffer from non-joinder of necessary parties; for adjudicating the issues, raised in the Writ Petitions, the State of Telangana and the Union of India are necessary parties; and, as the Petitioners have not added them as parties, the Writ Petitions are liable to be dismissed.

While it would have been useful, in examining the issues which arise for consideration in this batch of Writ Petitions, if the

State of Telangana and the Union of India were arrayed as respondents in all the Writ Petitions, that does not justify dismissal of these Writ Petitions on the ground of non-joinder of necessary parties. The petitioners are all, admittedly, working in units located either within the territorial limits of the residuary State of A.P, or in the headquarters of these units which are controlled and administered by the Board of Directors/Managing Committees constituted by the present Government of A.P. The relief which they seek is only from the Government of A.P, and not from either the Government of Telangana or the Union of India. Failure to implead the Government of Telangana and the Union of India, as respondents in most of these Writ Petitions, is therefore not fatal.

XIII. CONCLUSION:

The earlier G.Os were issued by the Government of A.P. without these legal entities amending its rules/regulations/bye-laws, governing the age of superannuation and without the prior approval of the sole/majority shareholder i.e., the State Government as required under the Articles of Association/byelaws of these legal entities. As the Rules and Regulations, by which the petitioners are governed, stipulate 58 years as the age of retirement, these employees cannot claim any right to continue in service till they attain the age of 60 years. It is only if the request of these Companies/Corporations/Societies, for amendment of its byelaws/rules and regulations, are approved by the State Government, and the rules/byelaws/regulations are amended thereafter in accordance with law, would their employees then be

governed by the enhanced age of superannuation prescribed under the Rules/bye-laws.

Since the Board of Directors/Managing Committees of these wholly or substantially government owned Companies/ Corporations/Societies have submitted proposals, the State Government is obligated to consider the request of each of these corporations/companies/societies separately, based on their financial position, genuineness of their need to enhance the age of superannuation etc, and then take a decision whether or not their request, to enhance the age of superannuation of their employees from 58 to 60 years, should be approved. Suffice it, if the Government of A.P. is directed to consider the proposals submitted by each of these corporations/societies/ companies, for enhancement of the age of superannuation from 58 to 60 years in accordance with law, and take a decision thereupon at the earliest, in any event not later than four months from the date of receipt of a copy of this order.

All the Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

Date:07.03.2017.

Note: L.R. copy to be marked.
B/o
MRKR/CS