

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26-03-2019

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.1928, 1954 and 2082 of 2019

And

W.M.P.Nos.2143, 2144, 2171, 2173, 2335 and 2336 of 2019

1.A.K.Praveenakumari ..Petitioner in WP 1928/19
2.E.ManojKumar ..Petitioner in WP 1954/19
3.R.Fathima ..Petitioner in WP 2082/19

vs

1.Tamil Nadu Public Service Commission
(TNPSC) represented by its Chairman,
TNPSC Road,
Chennai-600 003. ... R-1 in WPs 1928&2082/19

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
Chennai-600 003. ... R-2 in WPs 1928&2082/19, and
sole Respondent in WP 1954/19

The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road,
Chennai-600 003. ... R-3 in WPs 1928&2082/19

J.Jayasree
(R-4 impleaded as per order of Court dated
14.3.2019 made in WMP No.6734 of 2019).R-4 in WP 1928/19

K.Kaliraj
(R-4 impleaded as per order of Court dated
14.3.2019 made in WMP No.7341 of 2019).R-4 in WP 2082/19

Writ Petition Nos.1928 and 2082 of 2019 are filed under Article 226 of the Constitution of India praying to issue Writs of Mandamus, directing the respondents to permit the petitioner to attend the interview on or before 25.01.2019 by 12 Noon for the post of Group-I Services consequently direct them to appoint the petitioner in anyone of the Group-I Post subject to the outcome of performance in the interview by the petitioner.

Writ Petition No.1954 of 2019 is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to interview the petitioner for the post including in Combined Civil Services-I Examination Group-I Services Exam 2014-2016, declare the result and issue selection/posting orders to the petitioner with due preference, seniority and consequential monetary and other benefits which he would have got but for the illegal action of the respondent in preventing him from participating in the interview on 22.1.2019.

For Petitioner in WP 1928/19: Mr.R.Malaichamy

For Petitioner in WP 1954/19: Mr.N.G.R.Prasad for
M/s.Row and Reddy.

For Petitioner in WP 2082/19: Mr.R.Vijaya Khumar

For TNPSC in all WPs : Mr.V.T.Gopalan, Senior
Counsel for Ms.C.N.G.Niraimathi.

For Respondent-4 in WPs

1928 and 2082/19 : Mr.M.Ravi

C O M M O N O R D E R

The reliefs sought for in WP Nos.1928 and 2082 of 2019 are for a direction to direct the respondents to permit the writ petitioners to attend the interview on or before 25.01.2019 by 12 Noon for the post of Group-I Services consequently direct them to appoint the writ petitioners in anyone of the Group-I Post subject to the outcome of performance in the interview by the writ petitioners.

2. The relief sought for in WP No.1954 of 2018 is for a direction to direct the respondent to interview the writ petitioner for the post including in Combined Civil Services-I Examination Group-I Services Exam 2014-2016, declare the result and issue selection/ posting orders to the writ petitioner with due preference, seniority and consequential monetary and other benefits which he would have got but for the illegal action of the respondent in preventing him from participating in the interview on 22.1.2019.

3. Pursuant to the interim order granted, at the time of admission of the present writ petitions, the writ

petitioners were permitted to participate in the process of interview and the Committee also interviewed the writ petitioners.

4. The learned counsels, appearing on behalf of the respective writ petitioners, made submissions that all the writ petitioners are meritorious candidates and secured higher marks in the written examinations as well as in the interview. However, their selection is deferred on account of the fact that they had not mentioned their service particulars in the applications submitted through online to participate in the process of selection.

5. The Tamil Nadu Public Service Commission issued a Recruitment Notification on 9.11.2016 for selection to Group-I posts and the number of vacancies notified are 85. The writ petitioners had submitted their respective online applications pursuant to the Recruitment Notifications issued by the Tamil Nadu Public Service Commission.

6. The writ petitioners had participated in the process of selection. All the writ petitioners scored high marks in the written examinations and the writ petitioners were called for to attend the interview and further the writ petitioners were directed to produce the original documents, including the No Objection Certificate from the appropriate authority in the prescribed format.

7. The complaint of the writ petitioners are that they had appeared before the Interview Committee constituted by the Tamil Nadu Public Service Commission and they were allowed to enter into the premises. The officials of the respondent-Office collected the documents of the writ petitioners for verification. They had verified the Certificates, including the No Objection Certificate issued by the respective employers of the writ petitioners.

8. However, the Section Officer showing the other details submitted by the writ petitioners, at the time of submission of application, took an exception by stating that in the application as against the column "Are you a Government Employee", the writ petitioners mentioned "No". Citing this, the officials of the Tamil Nadu Public Service Commission informed the writ petitioners that they had suppressed the details of their employment in the column provided in the application submitted by them. The writ petitioners have stated that they have not suppressed any facts and the column specifically states whether the writ petitioners are the Government employees and thus, they had mentioned as "No".

9. To sustain the above reply of the writ petitioners before the competent authorities of the Tamil Nadu Public Service Commission, the respective learned counsels appearing on behalf of the writ petitioners took efforts by stating that, non-providing of the employment details are not amounting to suppression of facts. The writ petitioners are not Government employees. The writ petitioners are working in Reserve Bank of India, State Bank of India, Food Corporation of India or in the other Government Sector Undertakings or in the Corporations. Thus, the answer "No" provided in the application is with reference to the question asked in the online application and under these circumstances, the candidature of the writ petitioners cannot be rejected on the ground that they had suppressed the material facts in the application itself.

10. On behalf of the writ petitioners, it is contended that Reserve Bank of India or State Bank of India or any Public Sector Undertakings or Corporations, are not Government. Therefore, the rejection of the candidature of the writ petitioners are contrary to the very question as well as the instructions provide in the brochure. The writ petitioners state that the employees working in Reserve Bank of India are not Government employees. So also the employees working in the State Bank of India or in other Nationalised Banks or Public Sector Undertakings or Corporations are not Government employees. Therefore, the very exception taken by the authorities of the respondent are erroneous and on this ground the writ petitioners cannot be deprived of their opportunity to secure public employment, more specifically, to Group-I Services, as all the writ petitioners had secured higher marks and they are selected based on their merits.

11. The learned Senior Counsel, appearing on behalf of the Tamil Nadu Public Service Commission strenuously disputed the contentions raised on behalf of the writ petitioners. It is contended that the writ petitions are not maintainable against the Chairman of the Tamil Nadu Public Service Commission. Rule 20 of the Rules of procedures framed by the Tamil Nadu Public Service Commission, the Secretary is the person, who represents the Commission and he is the administrative head of the Commission. Thus, the name of the Chairman is to be deleted from the cause title. It is contended that the writ petitioners are not eligible to be admitted to the oral test itself on account of suppression of material information in their respective online applications and even at the stage of admission to the main written examinations, the writ petitioners were in employment of

the Government. However, these writ petitioners were permitted to attend the interview in obedience to the interim order granted by this Court in these writ petitions.

12. The writ petitioners were denied admission to the oral test because it was discovered at the time of certificate verification preceding the oral test that the writ petitioners were appointed in Reserve Bank of India, Canara Bank and any other Public Sector Undertakings and the employment details were not provided in the online application. Even at the time of submission of their applications as well as during the written examinations and at the time of certificate verification, all these writ petitioners were working in the Nationalised Banks, Reserve Bank of India and in public Sector Undertakings, which all are Government Sectors and all these Public Sector Undertakings and Reserve Bank of India are 'State' within the meaning of Article 12 of the Constitution of India.

13. In the column provide that whether the applicant is the Government employee or not?. The writ petitioners have stated "No". Therefore, they suppressed the material information regarding their previous employment attracting the violation of Instruction No.19. Instruction No.19 reads as under:-

"19. DISQUALIFICATION /

DEBARMENT:

The following acts will end in disqualification or debarment:

i.. If an applicant attempts to canvas and bring influence on the Chairman or any of the Member of the Commission personally / by letter / through relatives, friends, patrons, officials or other persons.

Debarment:

a) If an applicant attempts any tampering, alteration with the documents or certificates, he is liable to be debarred from appearing for any of the selections and examinations conducted by the Commission and consequently from entry into public service itself.

b) (i) Applicants furnishing false particulars in the matter of qualification medium of instruction or the nature of pass in various subjects, experience gained, their

religion or community, disciplinary proceedings, punishment, etc.,

(ii) Suppression of material information regarding

(a) Previous appearances or availing free chances, employment in Government or Local Bodies, Public Corporations etc.,

(b) Criminal Cases, Arrests, convictions debarment or disqualification by Union Public Service Commission / State Public Service Commissions.

(c) Participation in agitation or any political organization.

(d) Candidature in election for Parliament / State Legislature / Local bodies etc.,"

The above instructions are hosted in the website along with the Notification and the application.

14. The learned Senior Counsel proceeded by stating that if the benefit of doubt or indulgence or concession is required to be shown to one candidate, then the Commission will be failing in its duty to apply a uniform yardstick in its selection process and it will delay the selection process also.

15. The respondent-Commission rejects the application of the candidates or initiates action for debarment whenever cases attract such a course of action, failing which it will also not be able to adhere to its examination schedules for which purpose it has been constituted under the Constitution of India. Admittedly, the writ petitioners had applied in response to the Notification dated 9.11.2016. The candidates (including the writ petitioners) attention is invited to "Instructions to Applicants" at the Commission's website www.tnpsc.gov.in.

16. It is settled by more than one Division Bench of this Court that the Notification, Information Brochure and "Instructions to Applicants" have the force of law and have to be strictly complied with. It is binding on both the candidates and the Recruiting/State Agency. Therefore, the writ petitioners are bound by the instructions and various clauses in the Notification. Therefore, when the writ petitioners were non-suited for oral test on 22.1.2019, they came forward with two letters admitting non-disclosure of their employment in the online application and ignorance of the instruction No.19 of the

"Instructions to Applicants" which stipulates disqualification or debarment of the candidates for suppressing material information regarding previous employment on the date of Notification and agreed to abide by the decision to be taken by the respondent-Commission.

17. The writ petitioners cases were considered by the respondent-Commission and finding that the writ petitioners have no bona fide reasons either to get misled by the terms and conditions of the Notification or the instructions to the applicants or to assume for themselves that they are not Government employees, it was decided to deny their admission to further selection process.

18. Admittedly, all the writ petitioners were in service at the time of submission of their respective applications for selection pursuant to Recruitment Notification issued by the Commission on 9.11.2016. When all the writ petitioners are in the services of the Nationalised Bank, Reserve Bank of India or in Public Sector Undertakings or Corporations, there is no reason to state that they had no knowledge about the fact that the Government Servants does not include the employees of the Reserve Bank of India, State Bank of India, Canara Bank or Public Sector Undertakings or Corporations.

19. The learned Senior Counsel contended that Clause 15 (f) of the Notification provides that "(f) If any of their claim is found to be incorrect, it will lead to rejection/debarment".

20. Circumstances attracting rejection/debarment is set out in Instruction No.19 (extracted supra).

21. The term 'etcetera' would encompass within its fold or take its colour from what precedes it. Therefore, even a legal entity constituted under the authority of the Government of India or of a State in India will bring in an employee like the writ petitioners within the meaning of the question as to whether they are the Government employees. Therefore, the writ petitioners who had suppressed their employment in Canara Bank, Reserve Bank and State Bank of India had rendered themselves liable for debarment/disqualification. Hence the writ petitioners were rightly denied admission to the oral test. There is nothing illegal or arbitrary in this action of the respondent-Commission.

22. The writ petitioners having declared that they have read with the clauses in the Notification,

Instructions etc., and have understood them and that the informations furnished in the online application are correct cannot now turn round and put forth an interpretation which suits them. It may not be out of place to submit that the candidates/writ petitioners, if they had any doubt about answering the question that the candidates are also informed under Clause 20(c) of the Instructions to Applicants as well as Clause 15(c) of the Notification that in case of any guidance/information/clarification of their applications, candidature etc. Applicants can contract Tamil Nadu Public Service Commission Office in person or over Telephone Nos.2533 2833/2533 2855 in the Commission's Officer Toll Free No.1800 425 1002 on all working days between 10.00 a.m., and 5.45 p.m.

23. Even in case of any such doubts, if at all aroused genuinely the writ petitioners ought to have contacted the Office of the Tamil Nadu Public Service Commission in the Toll Free Number or in the land line numbers provided. When such facilities are provided to the candidates, there is no reason to assume that they had interpreted the Government employees, which is not applicable to the employees of the Reserve Bank of India, Canara Bank, State Bank of India or Public Sector Undertakings or Corporations.

24. It is pertinent to note that the writ petitioners have not mentioned the facts regarding their service particulars at the stage of preliminary and main written examinations and also for the direct recruitment to the posts included as Group I Service. But at the stage of oral test, the writ petitioners have informed that they are working. Thus, the above facts ought to have been disclosed while applying for the examination. Thus, non-disclosure of the said material facts considered to be suppression of material facts and therefore, all the writ petitions are liable to be rejected.

25. The Tamil Nadu Public Service Commission filed an additional affidavit by stating that the writ petitioners, who all are opting for coveted posts included in Group-I Service cannot plead handicap in filling the online application. The fact that this question was not misleading to the candidates at large is evident from the fact that out of 14,473 candidates nearly 1,073 candidates similar to the writ petitioners working viz., in Public Organizations/Public Corporations, local bodies etc. All the candidates have answered 'Yes' and seen their way to the selection process. It is only the five writ petitioners, who claim to have been misled by the question

out of the 180 candidates short listed for the oral test.

26. Therefore, the writ petitioners cannot be heard to contend that the question was misleading or it was ambiguous or it has been rightly answered by each one of them. The respondent-Commission is furnishing the list of candidates similar to the writ petitioners, yet have disclosed their previous employment in compliance with Instruction No.19 of the 'Instructions to Applicants'. Thus, the action of the Tamil Nadu Public Service Commission in invoking Instruction No.19 as against the writ petitioners, is sustainable in law and accordingly, all the writ petitions are liable to be rejected.

27. The number of candidates, who have participated similar to the writ petitioners are enclosed by the respondent-Commission in the index to the typed set of papers, which shows that the candidates from Aavin, All India Radio, Allahabad bank, Andhra Bank, Audit for Milk Cooperative, Audit for Milk Cooperatives, Ayush, BHEL Tiruchirappalli, Bank of Baroda, Bank of India, Bank of Maharashtra, Bharath Heavy Electricals Limited, HEML Limited PSU, Bharat Sanchar Nigam Limited, BHEL Trichy, BHEL Security Department, Canara Bank, Cantonment Board, Carriage and Wagon Repair Shop, Central Bank of India, Central Cooperative bank, Central Warehousing Corporation, Chennai Metro Rail Ltd., Chennai Petroleum Corporation Ltd., CMDA, CMT Southern Railway, Cordite Factory Aruvankadu, Corporation Bank, Corporation of Chennai, CPCL, ESI Corporation, Food Corporation of India, FSSAI, General Insurance, Hindustan Newsprint Limited, Hindustan organic Chemicals Ltd., ICF, IDBI Bank Ltd., India Post, Indian Bank, Indian Overseas Bank, Indian Postal Service, Indian Railways, LIC of India, Madras Fertilizers Limited, New India Assurance Company Ltd., NLC India Ltd., NTPC Ltd., ONGC, Ordnance Factory, Oriental Bank of Commerce, Pallavan Grama Bank, Punjab National Bank, State Bank of Hyderabad, State Bank of India, State Bank of Mysore, State Bank of Travancore, Syndicate Bank, Tamil Nadu News Prints and Papers Ltd., Tamil Nadu Salt Corporation Ltd., TANGEDCO, TANSIDCO LTD., TDCC Bank, Tea Board India, The Cotton Corporation of India Ltd., The Oriental Insurance Company Ltd., The Shipping Corporation of India, TNCSC, TNEB, TNSC Bank, TNSTC Madurai Ltd., TWADBD Tamil Nadu Water Supply, UCO Bank, Union Bank of India, V.O.Chidambaram Port Trust, Vijaya Bank, Vizag Steel Plant, VOC Port Trust etc.

28. The candidates working in large number of Corporations/ Public Sector Undertakings/Nationalised Banks/ Scheduled Banks etc., have provided their employment

details in their respective applications. While-so, the interpretation provided are the wrong understanding of the writ petitioners in respect of the question cannot have any sanctity.

29. The learned Senior Counsel appearing for the respondent-Corporation cited the judgment of the Hon'ble Division Bench of this Court, which elaborated the issues covered in the present writ petitions, in the case of Dr.M.Vennila vs. Tamil Nadu Public Service Commission, Represented by Deputy Secretary, Government Estate, Anna Salai, Chennai-2 [2006 (3) CTC 449], held in paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24 are extracted hereunder:-

"16. Now, let us consider whether the requirements as stated in the Notification/Information Brochure are to be strictly complied with or not and in other words, whether they are mandatory?

17. Learned counsel appearing for the petitioners referred to two decisions of the Supreme Court, viz., (i) M/s. G.J. Fernandez v.State of Karnataka, AIR 1990 SC 958; and (ii) M/s. Poddar Steel Corporation v. M/s. Ganesh Engineering Works, AIR 1991 SC 1579, and contended that failure to sign below the Column-24 and below the declaration column is curable. In view of the above submission, we verified the factual position in the above referred to decisions. It is not in dispute that both the decisions relate to submission of Tender Forms. On going through the factual details and the ratio laid down therein, in view of the specific details furnished in the Information Brochure and Notification issued by the Tamil Nadu Public Service Commission, we are satisfied that the same are not helpful to the petitioners. As a matter of fact, in the latter decision, viz., M/s. Poddar Steel Corporation v. M/s. Ganesh Engineering Works, AIR 1991 SC 1579, the defect that was pointed out by the Government Agency was that though the earnest money under the terms of tender notice was permitted to be

deposited only by cash or by demand draft drawn on the State Bank of India, the payment of earnest money was sent by way of certified cheque of Union Bank of India and in that situation, the Supreme Court after pointing out that the payment of earnest money by certified cheque of Union Bank of India, drawn on its own Branch could be treated as sufficient compliance of the terms. Their Lordships have also held that it could not be said that the authority inviting the tenders could not waive the literal compliance of such a condition and accept the tender especially when it was in its interest not to reject the bid which was the highest. In our case, in all these Writ Petitions, the petitioners have not signed the applications, some in two places and others below the declaration. In such circumstances, as said earlier, the decisions relied on by the learned counsel for the petitioners are not helpful to their stand.

18. The learned counsel for the petitioners referred to the decision of a learned single Judge of this Court in the case of G. Packkiaraj v. The Secretary, Tamil Nadu Public Service Commission, Government Estate, Chennai-2 and another, 2006 (2) TNLJ 52 (Civil). It is a Writ Petition relating to rejection of an application of the petitioner, G. Packkiaraj, who applied for the post of Assistant Public Prosecutor Grade-II. The application was rejected, since he did not sign the application. According to the petitioner, he did sign at the bottom of the application as well as Column 15 where the applicant has to affix his photograph and sign underneath the photograph. But in the application form, there is one other place, i.e. at the end of Column 24

where the signature of the applicant was required to be made. In that particular column, the petitioner failed to put his signature. It was on that ground, the application of the petitioner came to be rejected inasmuch as, as per the instructions issued to the candidates, applications which are not signed would be summarily rejected. It was contended before the learned Judge that the petitioner was totally misled by the application which was issued in a single sheet, which required the signature of the applicant in more than one place and when it required the signature of the applicant at the end of the application form, which was just below the "Declaration part", the nonsigning by the petitioner below the column-24 was not deliberate and was only due to inadvertence and therefore, the meritorious claim of the applicant should not be thrown out on account of such minuscule mistake. On behalf of the Commission, very same objection was raised, viz., that the Instructions to the Candidates were specific to the effect that the applications without signature would be summarily rejected. It was informed before the learned Judge that the petitioner was permitted to write the examinations as a special case, subject to the outcome of the Writ Petition. It was further informed before the learned Judge that the petitioner was successful in the written examinations and also attended viva-voce test and the respondents found that he secured the required minimum marks for attending the oral test. His result was kept in a sealed cover and the same was opened before the learned Judge who noted that the petitioner secured 216.50 marks in the written test out of 400 and in the oral test he secured 30 out of 60 marks and in all, the petitioner secured 246.50 marks. In the

circumstances, the learned Judge came to the conclusion that the petitioner is a meritorious candidate, that too belonging to Scheduled Caste and arrived at a conclusion that "minuscule mistake committed by the petitioner should not loom large in order to deprive of his very valuable right." It is not in dispute that there also the notification of the Commission made it clear that all columns are to be filled up and the applicants are to sign at all the places indicated therein. In spite of the specific instructions, the petitioner therein has not signed at a place where he has to sign in the application form. The academic excellence of the petitioner might have influenced the mind of the learned Judge to out-waive his mistake in not filling up the relevant column. However, the conditions stated in the Notification as well as in Information Brochure are not only mandatory and also binding on the candidates as well as the Commission/State Government. We will give our reasons as to the mandatory nature in the latter paragraphs. We have already mentioned that the petitioner therein was not only successful in written test but also in vivo-voce and secured pass mark and he belongs to Scheduled Caste, and therefore, the learned Judge issued a direction to the Commission to entertain his application and issued further direction to declare him as successful in the examinations. We are unable to accept the view expressed by the learned Judge. In view of the academic excellence and of the fact that the petitioner was successful in the written examination as well as in vivo-voce, the conclusion arrived at by the learned Judge should be confined to the case before him and the same cannot be cited as a precedent for other cases. In fact, in

respect of rejection of the applications applied for the very same post of Assistant Surgeon, another learned Judge by orders dated 5.10.2005 and 07.10.2005, dismissed Writ Petition Nos. 32270 and 32548 of 2005 respectively. Though the orders of the learned Judge are very brief, we are in agreement with the conclusion arrived at by him.

19. The principle that the prospectus is binding on all persons concerned has been laid by the Supreme Court in Punjab Engineering College, Chandigarh v. Sanjay Gulati, AIR 1983 SC 580: 1983 (96) LW 172 (S.N.). Following the same, a Division Bench of this Court has also observed in Rathnaswamy, Dr. A. v. Director of Medical Education, 1986 WLR 207, that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same view is also taken by another Division Bench of this Court in Nithiyan P. and S.P. Prasanna v. State of Tamil Nadu, 1994 WLR 624. The same principle is reiterated in the case of Dr. M. Ashiq Nihmathullah v. The Government of Tamil Nadu and others, 2005 (5) CTC 26: 2005 WLR 697. It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission.

20. Learned Advocate General relied on the following two decisions of the Supreme Court, (i) W.B. State Electricity Board v. Patel Engineering Co., 2001 (2) SCC 451; and (ii) Rajsekhar Gogoi v. State of Assam, 2001 (6) SCC 46, in support of his stand. It is true that both the decisions relate to Government contracts and submission of tenders. The following observation made in W.B. State Electricity Board v. Patel

Engineering Co., 2001 (2) SCC 451, is relevant:

"23. The mistakes/errors in question, it is stated, are unintentional and occurred due to the fault of computer termed as "a repetitive systematic computer typographical transmission failure". It is difficult to accept this contention. A mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of respondents 1 to 4 to correct the same before submission of the bid. Had they been vigilant in checking the bid documents before their submission, the mistakes would have been avoided. Further, correction of such mistakes after one-and-a-half months of opening of the bids will also be violative of clauses 24.1, 24.3 and 29.1 of the ITB."

In para 31 their Lordships have held:

"31..... It is equally in public interest to adhere to the rules and conditions subject to which bids are invited....."

After laying down the law, though the bid of respondents 1 to 4 therein is the lowest of bids offered, in view of the fact that there is inconsistency between the particulars given in the annexure and the total bid amount, their Lordships refused to issue direction to consider their bid along with the other bids. It is clear that though bid of the respondents 1 to 4 therein is less by 40 crores and 80 crores than that of respondents 11 and 10 respectively, in view of the defect in complying with the conditions, the Supreme Court refused to issue direction for acceptance of the lowest bid of respondents 1 to 4.

In other words, it makes it clear that it is in public interest to adhere to rules and conditions and there cannot be any laxity in compliance of the same.

21. In the second decision, viz., *Rajsekhar Gogoi v. State of Assam*, 2001 (6) SCC 46, though it also relates to submission of tenders, the principle laid down is helpful to the stand taken by the Tamil Nadu Public Service Commission. The respondent No. 4, in respect of column whether the tenderer is capable of financing his business himself, namely, details of source, cash in hand, bank balance, security, assets, etc., has made a bald statement that she would receive financial assistance from her father and also from her sister and sister's husband. No documents or even affidavits or any other particulars were furnished along with the tender which she submitted. There is no indication as to whether she had any cash in hand or bank balance. In the absence of specific materials regarding finance, nature of business, cash in hand, bank balance, security, assets, etc., the Supreme Court has concluded that the need for furnishing particulars in the tender form obviously is to enable the authorities concerned to scrutinize the tender to determine financial capability of the tenderer. Taking note of Clause 10 of the Tender conditions (which is imperative), their Lordships have concluded that—

“10. This clearly shows that it was imperative for a tenderer to furnish full information as required so that the same could be verified by the Deputy Commissioner or any other authorized person “before settlement of shop to the tenderer” (emphasis added). In the present case, such an opportunity was clearly denied to the authorities when respondent 4 had not

furnished the requisite particulars along with her tender.

11. We are therefore, of the opinion that as the tender itself of respondent 4 was liable to be rejected because of lack of particulars as stated hereinabove, no further question arises....."

It is clear from the above decisions that it is imperative for either a candidate or a tenderer or a person concerned to furnish full information as required in order to verify the same by the authority concerned. In the case on hand though particulars have been furnished, as pointed out earlier, in the absence of proper authentication by the persons concerned by affixing their signatures, their applications are liable to be rejected.

22. Learned Advocate General has also placed reliance on the Full Bench decision of Punjab and Haryana High Court in the case of Indu Gupta v. Director, Sports Punjab, Chandigarh, AIR 1999 P & H 319 (FB). In the case before the Full Bench, the petitioner applied for admission to B.Tech. course. She claimed the benefit of reservation under sports category. She could not get the gradation certificate countersigned by the Director of Sports, Punjab, and so she was not considered for admission under reserved category for sports personnel. The argument advanced by the counsel representing the petitioner is that gradation certificate, based on her performance in the sports meet is only evidencing the existence of fact entitling her to the benefit of reservation and so the condition that gradation certificate should be sent along with the application form for admission is only a formality and candidate may produce the gradation certificate at the time

of admission. In support of the contention, the petitioner relied on the observation made by a learned single Judge in Civil Writ Petition No. 11787 of 1995 decided on September 8, 1995 and the reasons given by the learned single Judge were approved by a Division Bench in L.P.A. filed against that judgment by the Punjabi University, Patiala. However, in Civil Writ Petition Nos. 9211 of 1997 decided on August 26, 1997, and 12093 of 1997 decided on August 28, 1997, the other Division Benches took the view that application for admission should have been enclosed with a copy of the gradation certificate and that the candidate who produced the gradation certificate after the submission of the application is not entitled to the benefit of reservation as a sport person. In view of the divergent view, the matter was referred to Full Bench for consideration. It is seen from the factual details presented before the Full Bench that admission in the participating institutions of Punjab Technical University, Jalandhar has to be made as per the terms and conditions contained in the admission brochure/application form issued for the year 1997. In the application form it was specifically stated that all particulars required must be filled in and attested photo copies of the certificates in support of the claim made by the candidates must be attached with the application form. Clause 3.8 makes it clear that the application complete in all respects should reach the Co-ordinator CET-1997, Punjab Technical University, Jalandhar by 5.00 p.m. on June 25, 1997. It is also specifically stated that the application not submitted in the prescribed application form or not filled by the candidate's own handwriting or not supported by attested photocopies of the documents

or incomplete application in any other manner or received after the due date/time will be rejected. The above mentioned terms and conditions contained in the brochure have been issued by Notification of the Punjab Government dated 30th January, 1997. The terms and conditions regarding eligibility, reservation, allocation of seats, gradation certificate, and public declaration are binding on the candidates as well as the party issuing the said brochure for the period in question. In para 9, their Lordships by referring the earlier Full Bench decision in the case of Raj Singh v. Maharshi Dayanand University, 1994 (4) Recent Services Judgments 289, disapproved the liberal construction of the terms and conditions of the brochure and specified the need for their strict adherence to avoid unnecessary prejudice to the candidates or the authority during the course of admission. In the same paragraph, by referring the Division Bench decision in the case of Madhvika Khurana (minor) v. M.D. University, Civil W.P. No. 15367 of 1991, their Lordships observed that the students seeking admission to the professional courses are even otherwise matured enough and supposed to understand the full implication of filling the admission form and compliance with the instructions contained in the brochure. In paragraph 10 their Lordships noticed another Full Bench decision Rahul Prabhakar v. Punjab Technical University, Jalandhar, 1997 (3) RSJ 475: AIR 1998 P & H 18, wherein it is stated that—

“A Full Bench of this Court in Amardeep Singh Sahota v. State of Punjab, 1993 (4) Serv. LR 673, had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view

that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In *Raj Singh v. Maharshi Dayanand University*, 1994 (4) RSJ 289, another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in *Sachin Gaur v. Punjab University*, 1996 (1) RSJ 1: AIR 1996 P & H 109, took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in C.W.P. No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the co-ordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus

or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected."

23. Regarding the effect of Information Brochure, the Full Bench has concluded that—

"11. The cumulative effect of the above well enunciated principles of law, is that the terms and conditions of the brochure where they used pre-emptory language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an individual in such matters, to waive or dilute the stipulated conditions of the brochure would per se introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and conditions of the brochure, more particularly, where the cut off date itself has been provided in the brochure. The brochure has the force of law. Submission of applications complete in all respects is a sine qua non to the valid acceptance and consideration of an application for allotment of seats in accordance with the terms prescribed in the brochure."

"13.....Repeated affirmation of the principle by different Full Benches of this Court while relying upon the judgments of the Hon'ble Apex Court, unambiguously contains the dictum that the brochure declared before the entrance test has the force of law, strict adherence to its terms and conditions is of paramount consideration and terms and conditions including the cut off date cannot be

relaxed unless such power is specifically provided to a given authority by use of unambiguous language....."

Finally, their Lordships have concluded:

"16. In view of the above discussion the only unassailable and veritable view is that a candidate to such entrance test, in view of the terms and conditions of the brochure, afore-referred, is obliged to submit all the certificates required to annex along with the application and submit the same complete in all respects before the cut off date. In default thereto, no obligation is imposed upon the authorities concerned to entertain such application or to grant seat to that candidate."

24. We have already referred to various terms and conditions mentioned in the application form prescribed by Punjab Technical University, Jalandhar, which are similar to Clause 17 of Instruction to Candidates, etc., and Information Brochure issued by the Tamil Nadu Public Service Commission. It has been repeatedly affirmed by almost all the Full Benches of the Punjab and Haryana High Court that the Information Brochure has the force of law and has to be strictly complied with. We are in respectful agreement with the said view."

30. In the case of Ajay Hasia and Others vs. Khalid Mujib Sehravardi and Others [(1981) 1 SCC 722], the Hon'ble Supreme Court of India, held in paragraphs 9, 15 and 16 are extracted as under:-

"9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case [Maneka Gandhi v. Union of India, (1978) 1 SCC

248 : (1978) 2 SCR 621] . These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621] as follows:

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government." (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621], be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12.

15. It is in the light of this discussion that we must now proceed to examine whether the Society in the present case is an "authority" falling within the definition of "State" in Article 12. Is it an instrumentality or agency of the Government? The answer must obviously be in the affirmative if we have regard to the Memorandum of Association and the Rules of the Society. The composition of the Society is dominated by the representatives appointed by the Central Government and the Governments of Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh with the approval of the Central Government. The monies required for running the College are provided entirely by the Central Government and the Government of Jammu & Kashmir and even if any other monies are to be received by the Society, it can be done only with the approval of the State and the Central Governments. The rules to be made by the Society are also required to have the prior approval of the State and the Central Governments and the accounts of the Society have also to be submitted to both the Governments for their scrutiny and satisfaction. The Society is also to comply with all such directions as may

be issued by the State Government with the approval of the Central Government in respect of any matters dealt with in the report of the Reviewing Committee. The control of the State and the Central Governments is indeed so deep and pervasive that no immovable property of the Society can be disposed of in any manner without the approval of both the Governments. The State and the Central Governments have even the power to appoint any other person or persons to be members of the Society and any member of the Society other than a member representing the State or the Central Government can be removed from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is in charge of general superintendence, direction and control of the affairs of Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Governments and to use the words of Ray, C.J. in Sukhdev Singh case [(1979) 3 SCC 489] the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or the agency of the State and the Central Governments and it is an "authority" within the meaning of Article 12.

16. If the Society is an "authority" and therefore "State" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article

14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3, 38 : 1974 SCC (L&S) 165, 200 : (1974) 2 SCR 348] that this Court laid bare a new dimension of Article 14 and pointed out that that article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagwati, J.) said: SCC p. 38: SCC (L&S) p. 200, para 85]

"The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., 'a way of life', and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and

dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in Royappa case [(1975) 1 SCC 485 : 1975 SCC (L&S) 99 : (1975) 3 SCR 616] and it was reaffirmed and elaborated by this Court in Maneka Gandhi v. Union of India[(1980) 4 SCC 95] where this Court again speaking through one of us (Bhagwati, J.) observed: (SCC pp. 283-84, para 7)

"Now the question immediately arises as to what is the requirement of Article 14: What is the content and reach of the great equalising principle enunciated in this Article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic

concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

This was again reiterated by this Court in International Airport Authority case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621] at p. 1042 (SCC p. 511) of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because any [Under Article 32 of the Constitution] action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

31. In the case of C.V.Raman vs. Management of Bank of India and Another [(1988) 3 SCC 105], the Hon'ble Supreme Court of India, held in paragraphs 6 to 12 and 16 are extracted as under:-

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

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

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

7. What has to be considered is as to whether the State Bank of India and the nationalised banks can be said to be establishments under the Central Government as contemplated by clause

(c) aforesaid. What does the word "under" in the said clause mean in the context in which it appears? That is the crucial question which arises for consideration in these cases. The said word "under" not having been defined in the concerned Acts, recourse may be had to its dictionary meanings. Some of them are as follows:

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

Subordinate or lower rank or position. In senses denoting subordination or subjugation, with abstract or other subject, denoting the authority or control, direction, case examination, restraint, etc. In or into a position or state of subjugation or submission. (Shorter Oxford English Dictionary) Subordinate, subjected to. (The Compact Edn. of the Oxford Dictionary) Subject to the authority, rule, control of Subject to the supervision instruction or influence of. (The Grolier International Dictionary) In a position of inferiority or subordination to, subject to the Rule, government, direction, guidance, instruction, or influence of, as, he is under my care, I served under his father. In a state of liability, obligation. Lower in authority, position, power, etc. subordinate. Held in control or restraint, used predicatively. (Webster's Dictionary of the English Language - Encyclopaedia) The term sometimes used in its literal sense of "below in position" but more frequently in its secondary meaning of "inferior" or subordinate. (Boviar's Law Dictionary) Inferior, subordinate, of lower rank or position (10) - Denoting subordination to; or control by, a person or persons having or exercising, recognising authority or command. With abstract or other subs.

denoting authority or control, with or without specification of the person or persons exercising it. (The Compact Edn. of the Oxford English Dictionary) Under has the same significance as "by virtue of" "by or through the authority of". (In Venkataramiya's Law Lexicon) The word "under" may be used in statute in its literal sense as indicating condition of inferiority or subservience or as meaning subject to or in conformity with, denoting curtailment or restriction of, but nevertheless agreement or congruity with, something else to which it is made applicable. *Alsop v. Pierce*, 19 So 2d 799, 802, 155 Fla. 184. (Words and Phrases Permanent Edn.)

8. We may now advert to the composition and constitution of the State Bank of India and the nationalised banks. The preamble of the State Bank of India Act, 1955 (hereinafter referred to as "Act 23 of 1955") reads as under:

"Whereas for the extension of banking facilities on a large scale, more particularly in the rural and semi-urban areas, and for diverse other public purposes it is expedient to constitute a State Bank of India, and to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto."

Section 3 provides that a bank to be called the State Bank of India shall be constituted to carry on the business of banking and other business in accordance with the provisions of the Act and for the purpose of taking over the undertaking of the Imperial Bank. It further provides that the Reserve Bank together with such other persons as may from time to time become shareholders in the State Bank in accordance with the provisions of this Act, shall, so long as they are shareholders in the State Bank, constitute a body corporate with

perpetual succession and a common seal under the name of the State Bank of India and shall sue and be sued in that name. It shall have power to acquire and hold property, whether movable or immovable for the purposes for which it is constituted to dispose of the same. According to Section 4 the authorised capital of the State Bank is to be twenty crores of rupees divided into twenty lakhs of fully paid up shares of one hundred rupees each. The Central Government, however, has been given the power to increase or reduce the authorised capital as it thinks fit so, however that the shares in all the cases shall be fully paid up shares of one hundred rupees each. Likewise the Central Government under Section 5(2) has been given the power from time to time to increase issued capital in the manner stated therein. Sub-section (3) contemplates that no increase in the issued capital beyond twelve crores and fifty lakhs of rupees shall be made without the previous sanction of Central Government. Section 6 contemplates that all shares in the capital of the Imperial Bank shall be transferred to and shall vest in the Reserve Bank free of all trusts, liabilities and encumbrances and the undertaking of the Imperial Bank shall be transferred to and shall vest in the State Bank subject to the other conditions laid down therein. Under sub-section (2) of Section 7 the power to determine as to whether persons mentioned therein have observed the conditions contemplated by the said sub-section has been given to the Central Government and its decision has been made final. Sub-section (3) of Section 7 contemplates that the appointment, promotion or increment contemplated by the said sub-section as have been confirmed by the Central Government shall have effect or be payable or claimable. Likewise, the continued grant of the

pension, allowance or other benefit, as the case may be, has been made subject to the direction of the Central Government in this behalf. Section 8 contemplates that for the persons who immediately before the appointed day were the trustees of the funds mentioned therein, there shall be substituted as trustees such persons as the Central Government may by General or special order specify. Sub-section (1) of Section 16 contemplates that the central office of the State Bank shall be at Bombay. The Central Government, however, has been conferred with the power to provide otherwise by notification in the official gazette. Sub-section (5) of Section 16 provides that notwithstanding anything contained in sub-section (4) the State Bank shall establish not less than four hundred branches in addition to the branches referred to in sub-section (3) within five years of the appointed day, or such extended period as the Central Government may specify in this behalf and the places where such additional branches are to be established shall be determined in accordance with any such programme as may be drawn up by the Central Government from time to time in consultation with the Reserve Bank and the State Bank. Even though in view of Section 17 the general superintendence and direction of the affairs and business of the State Bank have been entrusted to the Central Board, Section 18 contemplates that in the discharge of its functions the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank, give to it and that if any question arises whether the direction relates to a matter of policy involving public interest, the decision of the Central

Government thereon is to be final. Section 19 deals with the composition of the Central Board. Clauses (a), (b), (c), (ca), (cb) and (e) of sub-section (1), sub-sections (1-A), (2) and (3-A) indicate that the Central Government has been given extensive power in the matter of composition of the Central Board. Section 45 provides that no provision of law relating to the winding up of companies shall apply to the State Bank and the State Bank shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct. This section, therefore, entitles the Central Government even to liquidate the State Bank. Section 49 confers power on the Central Government in consultation with the Reserve Bank to make rules to provide for all matters mentioned therein. The power given under Section 50 to the Central Board to make regulations has been made subject to the previous sanction of the Central Government. These provisions indicate that the Central Government has a deep and pervasive control over the State Bank of India.

9. Almost similar is the position with regard to the nationalised banks also. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as "Act 5 of 1970") was enacted to provide for acquisition and transfer of the undertakings of certain banking companies having regard to their size, resources, coverage and organisation, in order to control the heights of the economy and to meet progressively and serve better the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto. Clauses (d) and (f) of Section 2 of this Act define "corresponding new banks" and

"existing banks". First Schedule to the Act in column 1 enumerates the names of the existing banks whereas in column 2 the names of the corresponding new banks. Sections 3 and 4 indicate that the corresponding new banks which are constituted on the commencement of this Act have taken over the undertakings of the concerned existing banks. Section 6 contemplates that every existing bank shall be given by the Central Government such compensation in respect of transfer under Section 4 to the corresponding new banks of the undertakings of the existing banks as is specified against each such bank in the Second Schedule. Section 7 provides that the Head Office of each corresponding new bank shall be at such place as the Central Government may by notification in the official gazette specify in this behalf. The general superintendence, direction and management of the affairs and business of a corresponding new bank are to vest in a Board of Directors and it is the Central Government which in consultation with the Reserve Bank has been given the power under sub-section (3) to constitute the first Board of Directors consisting of not more than seven persons to be appointed by the Central Government. The proviso to the said sub-section authorises the Central Government if it is of opinion that it is necessary in the interests of the corresponding new bank so to do to remove a person from the membership of the first Board of Directors and appoint any other person in his place. The proviso to sub-section (5) to Section 7 contemplates that the Central Government may if the Chairman of an existing bank declines to become or to continue the function as a Custodian of the corresponding new bank or it is of opinion that it is necessary in the interests of the corresponding new bank, so to do

appoint any other person as the Custodian of a corresponding new bank and the Custodian so appointed shall receive such emoluments as the Central Government may specify in this behalf. According to sub-section (6) thereof the Custodian is to hold office during the pleasure of the Central Government. Section 8 on the other hand contemplates that every corresponding new bank shall in the discharge of its functions be guided by such directions in regard to matters of policy involving public interest as the Central Government may after consultation with the Governor of the Reserve Bank give. Sub-section (1) of Section 9 of this Act confers power on the Central Government to make a scheme for carrying out the provisions of this Act after consultation with the Reserve Bank. Sub-section (2) of Section 9 provides that in particular and without prejudice to the generality of the power contained in sub-section (1) the said scheme may provide for the capital structure of the corresponding new bank, the constitution of the Board of Directors by whatever name called of the corresponding new bank and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient, the reconstitution of any corresponding new bank into two or more corporations, the amalgamation of any corresponding new bank with any other corresponding new bank or with another banking institution, the transfer of the whole or any part of the undertaking of a corresponding new bank to any other banking institution or the transfer of the whole or any part of the undertaking of any other banking institution to a corresponding new bank and such incidental consequential and supplemental matters as may be necessary to carry out the

provisions of this Act. Sub-section (4) entitles the Central Government in consultation with the Reserve Bank to make a scheme to amend or vary any scheme made under sub-section (1). Sub-section (5) inter alia contemplates that the scheme so prepared by the Central Government shall be binding on the corresponding new banks or corporations or banking institutions and also on all other persons mentioned therein. Section 10 deals with closure of accounts and disposal of profits. Sub-section (2) thereof contemplates that the remuneration payable to every auditor of a corresponding new bank shall be such as the Reserve Bank may fix in consultation with the Central Government. Under sub-section (4) every auditor of a corresponding new bank has to make a report to the Central Government upon the annual balance sheet and accounts and such report shall contain what is provided for in clauses (a) to (e). Sub-section (7) contemplates that after making provision for monies specified therein a corresponding new bank shall transfer the balance of profits to the Central Government. Sub-section (7-A) makes it obligatory on every corresponding new bank to furnish to the Central Government the annual balance sheet, the profit and loss account and the auditor's report and a report by its Board of Directors on the working and activities of the bank during the period covered by the accounts. In view of sub-section (8) the Central Government shall cause every auditor's report and report on the working and activities of each corresponding new bank to be laid before each House of Parliament. Sub-section (9) without prejudice to the provisions contained earlier authorises the Central Government, at any time, to appoint such number of auditors as it thinks fit to examine

and report on the accounts of a corresponding new bank. Sub-section (3) of Section 12 contemplates that for the persons who immediately before the commencement of this Act were the trustees for any pension, provident, gratuity or other life fund constituted for the officers or other employees of an existing bank there shall be substituted as trustees such persons as the Central Government may by general or special order specify. Section 18 of this Act is in pari materia with Section 45 of the State Bank of India Act. It provides that no provision of law relating to winding up of corporations shall apply to a corresponding new bank and no corresponding new bank shall be placed in liquidation save by order of the Central Government and in such manner as it may direct. A nationalised bank also can, therefore, like the State Bank of India, be liquidated by the Central Government. Under Section 19 the power of the Board of Directors of a corresponding new bank to make regulations is subject to obtaining the previous sanction of the Central Government.

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

11. For the employees of these banks it was urged by their learned counsel that these banks are autonomous corporations having distinct juristic entity with a corporate structure of their own and cannot as such be treated to be owned by the Central Government. According to learned counsel the word "under" used in the expression "under the Central Government" connotes complete control in the sense of being owned by

the Central Government. We find it difficult to agree with this submission. We shall shortly deal with the legal position with regard to an autonomous corporation having distinct juristic entity with a corporate structure. Suffice it to say at this place that to uphold the submission of learned counsel for the employees the word "under" will have to be substituted by the word "of" in the relevant sub-section. It is obvious that the word "under" cannot be taken to have the same meaning as word "of" which may bring in the notion of ownership. Had that been the intention of the legislature we find no cogent reason as to why the word "of" was not used in place of the word "under" in the relevant sub-section. Indeed the concept of "under" can be relevant only when there are two entities one of which may be under the other. A department of the government strictly speaking is a part of the government and can only loosely be termed as under the government. Consequently the mere fact that the State Bank of India and the nationalised banks are different entities as corporate bodies for certain purposes cannot by itself be a circumstance from which it may be deduced that they cannot be establishments under the Central Government. Some of the cases on which reliance was placed by the High Court of Madras in taking the view that these banks were establishments under the Central Government had been rendered with reference to Article 12 of the Constitution. It was urged by learned counsel for the employees that since Article 12 of the Constitution defining the term "State" so as to include authorities under the control of the Government of India occurs in Part III of the Constitution dealing with fundamental rights, the decisions in the cases dealing with Article 12 could not be made the basis for the

decision that the State Bank of India and the nationalised banks were establishments under the Central Government within the meaning of the Acts referred to above with regard to shops and commercial establishments. Even though that be so, it cannot be gainsaid that the salient principles which have been laid down in those cases with regard to the authorities having a corporate structure and exercising autonomy in certain spheres will certainly be useful for determining as to whether the State Bank of India and the nationalised banks are establishments under the Central Government. *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258 : (1981) 2 SCR 79 : AIR 1981 SC 487] is a decision of a Constitution Bench of this Court. The question which came up for consideration in that case was whether Jammu and Kashmir Regional Engineering College, Srinagar registered as a society under the Jammu and Kashmir Registration of Societies Act, 1898 was a "State" under Article 12 of the Constitution and as such amenable to writ jurisdiction. It was held: [SCC p. 732 : SCC (L&S) pp. 266-67, para 7]

"But as the tasks of the government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the

corporation came into being as the third arm of the government and over the years it has been increasingly utilised by the government for setting up and running public enterprises and carrying out other public functions. Today with increasing assumption by the government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from 'departmental rigidity, slow motion procedure and hierarchy of officers'. The government in many of its commercial ventures and public enterprises is resorting more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases 'the true owner is the State, the real operator is the State and the effective controller is the State and accountability for its actions to the community and to Parliament is of the State'. It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the government. It is really the government which acts through the instrumentality or agency

of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the government." (emphasis supplied).

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

16. As regards the first reason referred to above we have already pointed out that even if the decisions dealing with Article 12 of the Constitution are not made the foundation for deciding the point in issue, the principles enumerated therein referred to above particularly with regard to deep and pervasive control are relevant for deciding the point in issue. As regards the second reason referred to above suffice it to point out that for holding that the State Bank of India and the nationalised banks are establishments under the Central Government which have a corporate structure and have freedom in the matter of day-to-day administration it is not necessary that these banks should be owned by the Central Government or be under its absolute control in the sense of a department of the government. With regard to the last reason namely the circumstance that even though Reserve Bank of India is mentioned specifically in the relevant clause containing exemption neither State Bank of India nor the nationalised banks are so mentioned, it may be

pointed out that the Reserve Bank of India was established as Shareholders' Bank under Act 2 of 1934. As seen above, the Kerala Shops Act and the Andhra Pradesh Shops Act which are of the years 1960 and 1966 respectively were modelled almost on the pattern of the Tamil Nadu Shops Act which is of the year 1947. When Section 4(1)(c) of this Act referred to the Reserve Bank of India in 1947 it obviously referred to it as Shareholders' Bank. The Reserve Bank Transfer to Public Ownership Act (Act 82 of 1948) came into force on January 1, 1949 and it was thereafter that the shares in the capital of the Reserve Bank came to belong to the Central Government. In this background no undue emphasis can be placed on the circumstance that the State Bank of India or the nationalised banks did not find mention in the provision containing exemption even though Reserve Bank of India was specifically mentioned therein. For the reasons stated above the aforesaid decisions of the Kerala High Court and the Andhra Pradesh High Court deserve to be set aside.

32. In the case of Bank of India and Others vs. O.P.Swarnakar and Others [(2003) 2 SCC 721], the Hon'ble Supreme Court of India, held in paragraphs 21 and 121 are extracted as under:-

"21. Mr Mukul Rohatgi appearing on behalf of the Bank of India would contend that as the writ petitions involved enforcement of contract qua contract, they were not maintainable. The learned counsel placed strong reliance on Har Shankar v. Dy. Excise and Taxation Commr. [(1975) 1 SCC 737].

121. We are furthermore not in a position to accept the arguments of Mr Mukul Rohatgi to the effect that writ petitions were not maintainable as thereby the writ petitioners intended to enforce a contract. The writ petitioners filed the writ petitions,

inter alia, questioning the validity of the Scheme. In any event validity of clause 10.5 of the said Scheme was in question. The appellants herein are "State" within the meaning of Article 12 of the Constitution of India. The questions raised by the writ petitioners thus could be raised in a proceeding under Article 226 of the Constitution of India. Furthermore, in the event it be held that the action of the appellants was arbitrary and unreasonable, the same would attract the wrath of Article 14 of the Constitution of India. Furthermore, the right of the employee to continue in employment, which is a fundamental right under Article 21 of the Constitution of India could not have been taken away except in accordance with law. The decision of this Court in *Har Shankar v. Dy. Excise and Taxation Commr.* [(1975) 1 SCC 737] is not apposite. In that case, this Court was concerned with the question as to whether enforcing the terms and conditions of a contract of supply of liquor which is a privilege would be permissible in a writ proceeding. In the aforementioned situation, the writ was held to be not maintainable. Such is not the position herein."

33. Let us now look into the instructions to candidates, which states that Clause 19 deals with disqualification/debarment and the same reads as under:-

"19. DISQUALIFICATION /
DEBARMENT:

The following acts will end in disqualification or debarment:

i.. If an applicant attempts to canvas and bring influence on the Chairman or any of the Member of the Commission personally / by letter / through relatives, friends, patrons, officials or other persons.

Debarment:

a) If an applicant attempts any tampering, alteration with the

documents or certificates, he is liable to be debarred from appearing for any of the selections and examinations conducted by the Commission and consequently from entry into public service itself.

b) (i) Applicants furnishing false particulars in the matter of qualification medium of instruction or the nature of pass in various subjects, experience gained, their religion or community, disciplinary proceedings, punishment, etc.,

(ii) Suppression of material information regarding

(a) Previous appearances or availing free chances, employment in Government or Local Bodies, Public Corporations etc.,

(b) Criminal Cases, Arrests, convictions debarment or disqualification by Union Public Service Commission / State Public Service Commissions.

(c) Participation in agitation or any political organization.

(d) Candidature in election for Parliament / State Legislature / Local bodies etc.,"

34. The above clause unambiguously states regarding the suppression of material information regarding previous appearances or availing free chances, employment in Government or Local Bodies, Public Corporations etc. The clause relating to disqualification/ debarment, unambiguously enumerates that the employment means the Local Bodies, Public Corporations etc. The word 'etc' to be interpreted that it covers all such Government Public Sector Undertakings and Corporations and other Companies or Bodies owned by the Government or substantially funded by the Government.

35. In order to interpret the meaning for the word 'etc', the High Court of Madhya Pradesh in the case of Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd. And others vs. Abhijeet Singh Dev [decided on 4.12.2018 in W.A.No.1658 of 2018], held as under:-

"Word 'etc' or 'etcetera' as noted in the Interpretation of Statute by Justice G.P. Singh, would

mean:

"'Etc.' or 'etcetera' does not mean 'et alia', but means 'and all the rest'. A clause in a charter party was worded as follows: 'Should the vessel be detained by causes over which the charterers have no control, viz. quarantine, ice, hurricane, blockade, clearing of the steamer after the last cargo is taken over, etc. no demurrage is to be WA-1658-2018 charged and lay days not to count'; Held, the initial general words were not limited to particular instances mentioned but referred to all causes over which the charterers had no control; See *Ambatielos v. Anton Jurgens Margarine Works*, (1922) All ER 543, pp. 546, 549 : 1923 AC 175 (HL)."

The foremost factor for consideration for appointment on compassionate ground since is to protect the family members of the deceased employee from penury. It is in said context, Clause 3.3 of the Policy is to be understood. And when the word 'etc' does not limit the instances shown therein, in our considered opinion, it is erroneous to exclude employment of respondent's mother with Madhav Institute of Technology and Science, an autonomous College, from the ambit of Clause 3.3."

36. Under these circumstances, this Court is of the considered opinion that if at all the writ petitioners had any doubt in respect of filling up the column, they would have contacted the Office of the respondent-Commission as provided in Clause 20(c) of the instructions to the applicants as well as Clause 15(c) of the Notification that in case of any guidance/information/clarification of their applications, candidature etc., applicants can contract Tamil Nadu Public Service Commission in person or over phone. Thus, ample opportunities are provided to the candidates in case of any doubts.

37. If at all the writ petitioners were of the

opinion that they are not Government employees, but working in Reserve Bank of India, State Bank of India, Canara Bank or in Corporations or in Public Sector Undertakings, they should have contacted the officials of the Public Service Commission either over phone or the toll free number and would have clarified, whether they have to provide the service particulars in respect of their employment or not. However, no such efforts have been taken by the writ petitioners to clarify the meaning of the column provided in the online application.

38. Under these circumstances, the writ petitioners cannot plead that they have presumed that the Government employment means the person working only in Government Departments and not in Reserve Bank of India or in any Public Sector Undertakings or Corporations. Such a presumption cannot save the disclosure of material facts to be provided in the application. If such presumption or self interpretation are allowed for the purpose of validating the candidature in the process of selection, then it would be difficult for the Public Service Commission to finalise the select list and the same would create an inconsistency in the matter of dealing with the applications in a consistent and uniform manner.

39. Equal opportunity in public employment is the constitutional mandate. The equality clause enunciated in the Constitution requires that all the applications are treated equally and the process of selection is done in an uniform manner. The consistency and adherence of Rules and Regulations in an uniform manner is also an integral part of the equality clause enunciated under the Constitution of India. Thus, there cannot be any exceptions in respect of adhering to the Rules and the conditions stipulated in the Recruitment Notification as well as the instructions provided in the brochure. The instructions provided in the brochure along with the application to the candidates are binding on the candidates. The said instructions further provides that in case of any doubt, the candidates are at liberty to call the officials of the Tamil Nadu Public Service Commission or in the toll free number provided. The details of the phone numbers and the details of the particulars are also notified and provided in the instructions.

40. This being the factum, the writ petitioners ought to have contacted the officials of the Tamil Nadu Public Service Commission before taking decision in respect of the column, which is provided for furnishing the employment details of the applicants. Without clarifying

such details, the writ petitioners themselves have opted to state that they are not Government employees, under the presumption that they are working in Reserve Bank of India, Canara Bank, State Bank of India or in Public Sector Undertakings or Corporations. Such a self interpretation in respect of the columns can never be accepted. It is found contrary to the instructions provided by the Public Service Commission's Instructions to candidates, which categorically enumerates employees means employment in Government or Local Bodies/Public Sector Undertakings or Corporations etc.

41. This apart, the Tamil Nadu Public Service Commission filed an affidavit stating that out of 14,473 candidates nearly 1,073 candidates similar to the writ petitioners working viz., in Public Organizations/Public Corporations, local bodies etc. All the candidates have answered 'Yes' and seen their way to the selection process. It is further stated that only five persons, who claim to have been misled by the question out of 180 candidates short listed for the oral test.

42. The facts and figures now provided by the Tamil Nadu Public Service Commission shows that the majority of the candidates have understood the meaning of the question with reference to the instructions provided along with the application form. While-so, an inference cannot be drawn by this Court only in respect of five or six persons. If such an inference is drawn by this Court, the same will defeat the very equality clause enunciated under the Constitution of India and further it dubious the process of selection, which is to be conducted in a consistent manner.

43. This being the principles to be followed, this Court is of the opinion that the writ petitioners have not made out any valid ground for the purpose of interference and to grant the relief, as such, sought for in the present writ petitions.

44. Accordingly, all the writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS iv)

//True Copy//

Sub Assistant Registrar

Svn

To

1.Tamil Nadu Public Service Commission
(TNPSC) represented by its Chairman,
TNPSC Road,
Chennai-600 003.

2.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
Chennai-600 003.

3.The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road,
Chennai-600 003.

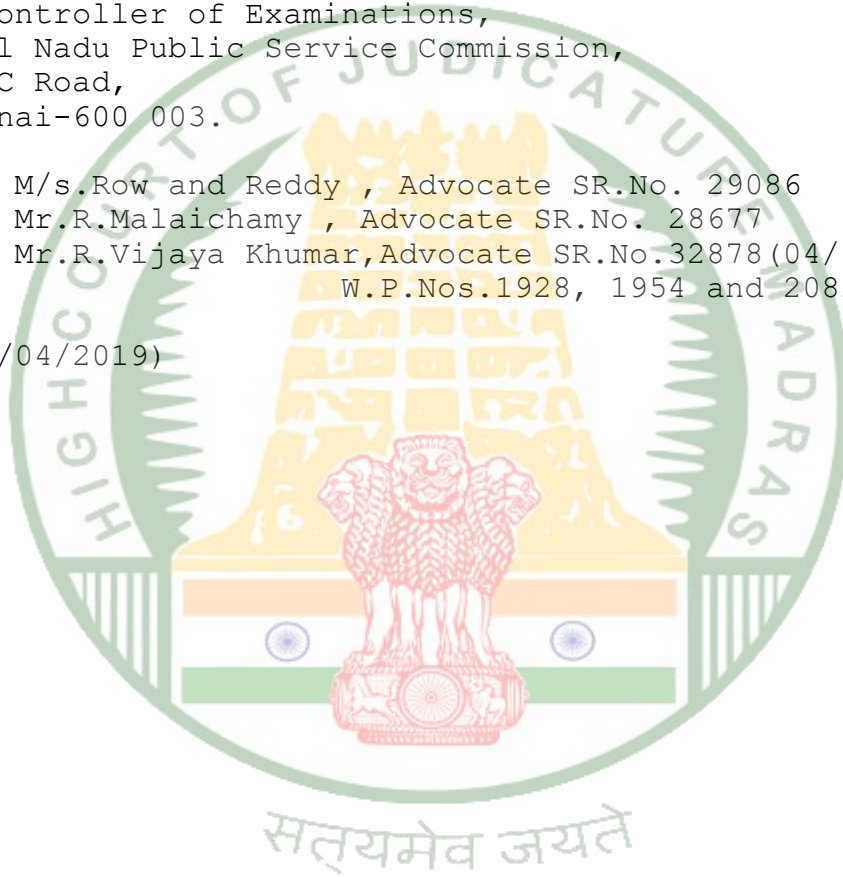
+1cc to M/s.Row and Reddy , Advocate SR.No. 29086

+1cc to Mr.R.Malaichamy , Advocate SR.No. 28677

+1cc to Mr.R.Vijaya Khumar, Advocate SR.No.32878 (04/04/2019)

W.P.Nos.1928, 1954 and 2082 of 2019

A.SK (02/04/2019)



WEB COPY