State of H.P. and another

Vs

Kailash Chand Mahajan and others

Civil Appeal No. 3062 of 1991

(R. M. Sahai, S. Mohan JJ)

20.02.1992

JUDGEMENT

MOHAN, J.:-

1. The facts relating to the Civil Appeal are as under :-

> The first respondent (Mr. Kailash Chand Mahajan) retired from the post of Chief Engihneeer from the State of Punjab. On 24-7-81, he was appointed as a member of Himachal Pradesh State Electricity Board and thereafter appointed as Chairman of the said Board for a period of two years. On 13-8-82, the following notification came to be issued:-
>
> "No. 8-155/73-DP (Apptt. 11) Dated Shimla-2, the 13th Aug. 1982
>
> Notification
>
> In exercise of the powers conferred by Section 5 of the Electricity (Supply) Act, 1948, the Governor, Himachal Pradesh, is pleased to appoint Shri Kailash Chand, Retd. Chief Engineer (Irrigation), Punjab, whose appointment as Member, H.P. State Electricity Board, has been notified vide Notification of even number, dated the 24th July 1981 as Chairman, H.P. State Electricity Board for a period of five years, with effect from 25th July, 1981. Detailed terms and conditions of his appointment has (sic).
>
> This is in supersession of this Deptt. Notification of even number, dated the 24th July, 1981.
>
> By Order
>
> K. C. Pandeya
>
> Chief Secretary to the
>
> Government of Himachal Pradesh."

On 12-5-86, the term as Chairman was extended for another period of three years in the following terms:-

"No. 8-155/73-DP (Apptt.II), dated Shimla-2, the 12th May, 1986.

Notification

In continuation of this Department's Notification of even number, dated 13-8-1982, the Governor, Himachal Pradesh is pleased to extend the appointment of Shri Kailash Chand Mahajan as Chairman of the H. P. State Electricity Board for a further period of three years with effect from 25th July, 1986, on the existing terms and conditions of his appointment as Chairman.

By Order

(P.K. Mattoo)

Chief Secretary to the

Government of Himachal Pradesh."

There was a further extension on 12-6-89 for a period of 3 years and that notification reads as under:-

"No. 8-155/73-DP (Apptt. II) dated Shimla-2 the 12th June, 1989.

Notification

In continuation of this Department's Notification of even number, dated 12th May, 1986, the Governor, Himachal Pradesh is pleased to extend the appointment of Shri Kailash Chand Mahajan as Chairman of the H. P. State Electricity Board for a further period of three years with effect from 25th July, 1989, on the existing terms and conditions of his appointment as Chairman.

2. The Governor, Himachal Pradesh is further pleased to order that Shri Kailash Chand Mahajan, Chairman, H. P. State Electricity Board shall also continue to function as Secretary (M. P. P. and Power) to the Government of Himachal Pradesh.

By Order

(B. C. Negi)

Chief Secretary to the

Government of Himachal Pradesh."

Therefore, it is obvious that the appointment was to continue up to 25-7-92.

2. In January, 1990, elections to the Legislative Assembly of the State of Himachal Pradesh were scheduled to take place. The respondent in his affidavit would aver that the third respondent (i.e. Mr. Shanta Kumar, the Chief Minister of Himachal Pradesh) is alleged to have made speeches that should he come to power he would have the first respondent removed from the chairnianship of the Electricity Board. On 5-3-90, the third respondent became the Chief Minister. A notification dated 6-3-90, came to be issued in supersession of the notification dated 12-6-89 that the appointment of

the first respondent as Chairman of the Himachal Pradesh State Electricity Board is extended from 25-7-89 to 6-3-90.

3. Another notification dated 6-3-90 was issued directing that Mr. R. S. S. Chauhan shall function as Chairman, H. P. State Electricity Board w.e.f. 7-3-90. At this stage the first respondent preferred a Writ Petition No. 123/90 challenging the validity of the notification dated 6-3-90, and prayed for certiorari to quash the same. While that writ petition was pending, on 30-3-90, another notification was issued terminating the appointment of the first respondent as Member of the State Electricity Board.

4. On 30-3-90, the High Court while admitting the writ petition (CWP No. 123 of 1990) ordered that no appointment to the post of Chairman of the State Electricity Board will be made till further orders of the Court. The matter was heard on 22-5-90. The learned Advocate General on conclusion of his argument requested the Court that the judgment may not be pronounced since he desired to seek instructions from the Government to reconsider the impugned order in CWP No. 123 of 1990. On 11-6-90, the learned Advocate General submitted to the Court that both the notifications dated 6-3-90 and 30-3-90 would be withdrawn. An undertaking to that effect was given. Accordingly the writ petition was disposed of. Consequent to this undertaking, by notification dated 11-6-90, the Government of Himachal Pradesh withdrew both the notifications dated 6-3-90 and 30-3-90. However, the matter did not rest there. On 11-6-90, a show cause notice was issued to the first respondent for having abused his position as Chairman, H.P. State Electricity Board and also ex-officio Secretary, M.P.P. & Power. He was also asked to submit his explanation within 21 days as to why action should not be taken under Section 10 of the Electricity (Supply) Act, 1948. Simultaneously, it was also ordered that he shall be placed under suspension with immediate effect by virtue of power under Section 10 of the said Act. Consequent upon the suspension of the first respondent, the notification dated 16th July, 1990 came to be issued placing Mr. R. S. S. Chauhan, Member (Operations), H. P. State Electricity Board as Chairman with immediate effect until further orders.

5. Being aggrieved by the above show cause notice and the order of suspension, the first respondent filed CWP 303 of 1990 on 12-6-90. The High Court while admitting the, writ petition granted interim stay of the order of suspension.

6. On 22-6-90, the Chief Secretary of the Govt. of Himachal Pradesh wrote to the Secretary, Government of India, Ministry of Home Affairs, New Delhi requesting for permission to promulgate Electricity (Supply H. P. Amendment) Ordinance, 1990. It was stated in the letter that at present no age limit has been prescribed for holding office of the Member of the State Electricity Board, it was necessary to prescribe an upper age limit. The concept of terminal appointment at which a person should cease to hold judicial offices and civil posts is entrenched in administrative and constitutional system. Therefore, it was proposed through the ordinance that no person above the age of 65 years could be appointed and continued as Chairman or Member of H. P. State Electricity Board. This provision was not only to apply to future appointments, but also to the existing Chairman and Members, and where the existing ineumbent's tenure is curtailed adequate compensation could be provided. No doubt, rules could be framed under Section 78 of the Electricity (Supply) Act, 1948. But those rules cannot have retrospective operations, hence the proposed ordinance.

7. On 9-7-90, the Government of India replied pointing out the desirability of the State Govt. examining with reference to the relevant provisions of the Act and the Constitution about the

promulgating the ordinance. The State was also advised to explore the feasibility of amending the rules.

8. On 13-7-90, the Governor of Himachal Pradesh issued an ordinance, i.e. H.P. Ordinance Rule of 2/90, amending Section 5(6) of the Electricity (Supply) Act. The ordinance reads to the following effect:-

"AUTHORITATIVE ENGLISH TEXT"

H.P. ORDINANCE NO.....OF 1990.

THE ELECTRICITY (SUPPLY)

(HIMACHAL PRADESH AMENDMENT) ORDINANCE, 1990

Promulgated by the Governor of Himachal Pradesh in the Forty-first year of the Republic of India.

An Ordinance to amend the Electricity (Supply) Act, 1948 (Central Act No. 54 of 1948) in its application of the State of Himachal Pradesh.

Whereas the Legislative Assembly of the 'State of Himachal Pradesh is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

And whereas instructions from the President of India to promulgate the Ordinance have been obtained;

Now, therefore, in exercise of the powers conferred by clause (1) of Article 213.of the Constitution of India, the Governor of Himachal Pradesh is pleased to promulgate the following Ordinance:-

1. This Ordinance may be called the Electricity (Supply) (Himachal Pradesh Amendment) Ordinance, 1990.

2. In sub-section (6) of Section 5 of the Electricity (Supply) Act, 1948, for the woras "if he is a member of Parliament", the words "if he has attained the age of 65 years or is a member of Parliament "shall be substituted."

3. (1) Notwithstanding anything to the contrary contained in any provisions of the Electricity (Supply) Act, 1948, rules, regulations or bye-laws made thereunder or in any judgment, decree or order of the Court, any appointment, made before the commencement of the Electricity (Supply) (Himachal Pradesh Amendment) Ordinance, 1990 ,whereby aperson has a right to continue as a member of the Board after attaining the age of 65 years, shall be void; and on such commencement he shall be deemed to have ceased to hold office of the Member of the Board.

(2) On ceasing to hold office of the member of the Board under sub-section (1), such member shall be entitled to a compensation as may be determined by the State Government; but such compensation shall not exceed the amount equivalent to the amount of salary and allowances payable to him for his unexpired term.

B. Rachaiah

Governor

Shimla :

The..... 1990."

As a sequel to the issue of this ordinance, the following notification was issued on 16-7-90:-

"Government of Himachal Pradesh

Department of Personnel (AP-II)

No. 8-155 / 71 -DP (Apptt. II) Dated, Shimla 2, the 16th July, 1990.

Notification

Whereas as a result of promulgation of the Electricity (Supply) (Himachal Pradesh Amendment) Ordinance, 1990, vide Notification No. LLR-D(6) 8 / 90-Legislation dated 13th July, 1990, published in the Rajpatra dated 13th July, 1990, Shri Kailash Chand Mahajan, Chairman, H. P. State Electricity Board, having already attained the age of more than sixty-five years, has ceased to be Member of the H. P. State Electricity Board and consequently Chairman of the said Board.

NOW, THEREFORE, in exercise of the owers vested in him under sub-section (5) of section 5 of the Electricity (Supply) Act, 1948, the Governor, Himachal Pradesh, is pleased to appoint Shri R. S. S. Chauhan, Member (Operation), H. P. State Electricity Board as Chairman of the H. P. State Electricity Board with immediate effect, till further orders.

By Order

M. S. Mukherjee

Chief Secretary to the Govt.

of Himachal Pradesh."

9. Aggrieved by the ordinance dated 13-7-90 and the above notification dated 16-7-90, the first respondent filed CWP No. 396 of 1990, praying for certiorari to quash the ordinance as well as the notifications.

10. Inter alia, the first respondent as writ petitioner before the High Court urged that there has been a deliberate attempt on the part of the State to get rid of him through the ordinance. The same is violative of Articles 14 and 16 of the Constitution. In so far as he is the only person affected by the ordinance having crossed the age of 65, he had been singled out for a total discriminatory treatment. It is a colourable exercise of power. While obtaining the consent of the President of India with regard to a subject falling under the Concurrent List, it was not even let known that a writ petition was actually pending concerning the petitioner. There had been a deliberate concealment of facts. In

any event, the Chief Minister (who was the fourth respondent was activated by mala fides. He was determined to remove the writ petitioner, as he held out in the election meeting.

11. The State filed a detailed counter affidavit. The fourth respondent (the Chief Minister) specifically denied the allegations of mala fides and urged that the ordinance came to be issued since a policy decision had been taken to introduce age of superannuation fixing the limit at 65. During the pendency of the writ petition, the ordinance came to be replaced by the Electricity (Supply) (Himachal Pradesh Amendment) Act, 1990 (H.P. Act of 10 of 1990). Therefore, an application for amendment was taken out challenging the validity of the amending Act. Before the High Court, the following points were urged:-

(i) mala fides -

(a) against the Chief Minister; and

(b) against the Legislature.

(ii) the act was unconstitutional and arbitrary. In that it had been passed to get rid of the petitioner, though a single person legislation was permissible in law, yet where the discrimination of the petitioner was wholly unjustified such a legislation would be bad in law.

(iii) The enactment was void as violative of Article 254.

(iv) It was also violative of Article 21 as it damaged the reputation of the writ petitioner therein.

(v) Section 3(1) of the Ordinance / Act renders a judgment of the Court void and was unconstitutional as being excessive legislative powers in so far as it impinges upon the judicial field.

(vi) Inasmuch as the right of the petitioner to continue as a Member / Chairman of the Board had been taken away, it is violative of Article 19. The compensation provided under Section 3(2) is vague and illusory.

(vii) Section 3(1) does not apply to the petitioner at all.

12. The Division Bench held that the evidence furnished by the petitioner in the form of newspaper reports would not be enough to hold that the Chief Minister, had any personal bias. The Legislature as a body cannot be accused of having passed a law for an extraneous purpose. Therefore, no mala fides could be attributed to the Legislature.

13. Dealing with the repugnancy it was held that by the impugned ordinance of the Electricity (Supply) Act, an age of superannuation has been brought in. There was no such age prescribed by the Central Act. Therefore, there was no repugnancy.

14. By mere curtailment of the term as Chairman of the Board without any mention about his inability or professional competence, so as to affect his reputation in any manner, no injury had taken place so as to complain of violation of Article 21 of the Constitution. The plea of interference with judicial power was negatived. The plea of violation of Article 19 that the provision of

compensation is illusory was negatived.

15. On an elaborate consideration of violation of Article 14, the Court after referring to the leading decisions of this Court concluded that prescription of maximum age by the amending Act at 65 years cannot be said to be arbitrary or irrational. Moreover public interest demands that there was ought to be an age of retirement in public services.

16. On the ancillary question whether the legislation had been enacted only.with a view to get rid of the petitioner and whether it would be bad as a single person's legislation, it was held that there was nothing illegal about it. In relation to applicability of Section 3(1) of the amending Act to the petitioner, the High Court construed that Section 3(1) will apply only to an appointment where a person has a right to continue after the attainment of 65 years. If, therefore, the petitioner had been appointed after he had attained the age of 65 years, he would not be affected by Section 3(1). Any contrary inference would not be justified by its language. It was also held that when Section 5(6) precluded the petitioner from "being a member" of the Board after he had attained 65 years of age, would not help the State as it would apply only prospectively. We may also refer to that particular argument advanced on behalf of the State that Mr. R. S. S. Chauhan having been appointed as Chairman, he ought to have been impleaded as a party. The Court rejected the plea not only on the ground that he was not a necessary party, but also on the ground that his appointment was only "until further orders".

17. In the result, the notification dated July, 17, 1990 was quashed. It is under these circumstances, Special Leave Petition was preferred to the Court. By an order dated 5th August, 1991, special leave was granted. Hence, this Civil Appeal.

18. Mr. Shanti Bhushan, learned counsel appearing for the State of Himachal Pradesh after taking us through the orders of appointment and the extensions would urge that though the inapplicability of the Ordinance or Acts was not raised, the High Court had allowed the argument. In other words, it was never urged that the Ordinance/ Act was not applicable to the first respondent. A bare reading of Section 2 which amended Section 5(6) of the Electricity (Supply) Act and Section 3 of the amending Act, both individually and conjointly lead to the only conclusion that the Act disqualifies every person from holding office who on the date of enactment, namely, 13th July, 1990 is above 65 years. The Act on its own terms makes no distinction whatsoever between those persons who have already attained the age of 65 years on the date of enactment or those who are less than 65 years. Therefore, the High Court was not right in introducing an artificial distinction. For the purpose of his argument he would submit that Section 5(6) as amended, would disqualify all persons who are at the time of the amendment 65 years or above. The language is very wide in its comprehension. When it says "or being", this corresponds to Article 102 of the Constitution as well as Article 191, this provision being made applicable either to the Members of Parliament or to the legislative body of the State respectively. It has been held in Pasupati Nath Sukul v. Nem Chand Jain, (1984) 2 SCC 404 : (AIR 1984 SC 399) that on the incurring of the qualification he ceases to be a member thereof. Therefore, there is a automatic cessation of the right to hold office, that is the purpose of "or being". There is no necessity to remove the first respondent, by resorting to Section 10 because Section 5(6) is self executory. Therefore, by operation of law, the first respondent ceases to hold office on the date of coming into force of the amending Act.

19. In Election Commission of India v. Saka Venkata Subba Rao, 1953 SCR 1144 : (AIR 1953 SC 210), it has been held on similar language occurring in the Constitution that it postulates both existing and supervening disqualification. If it is the avowed policy of the State to prescribe an age

of superannuation, certainly nobody could have a legitimate complaint. In fact, there are identical State legislative enactments in Andhra Pradesh and Uttar Pradesh specifying an age of superannuation. This Court upheld such a prescription in several cases. Hence, the first respondent cannot complain that he could continue indefinitely and others could be retired at the age of 65.

20. Section 3 of the amending Act was given retrospective effect from 13-7-90. This Section presupposes an appointment prior to amendment, namely, prior to 13-7-90. In this case, the appointment gives a right to continue after attaining the age of 65 years. If, therefore, the two tests are answered, the appointment is rendered void irrespective of the fact when the appointment took place. The 'Objects and Reasons' of the Act put the matter beyond doubt. In our country, the concept of age of superannuation is entrenched both in administrative as well as constitutional systems. Public policy requires to prescribe the age of 65 years for retirement of the members of Electricity Board as in the case of High Court judges, members of tribunal and other high functionaries.

21. The High Court had gone wrong as though the appointment of the first respondent was not covered by Section 3(1) since the right to continue as Chairman was pursuant to an appointment after he had attained the age of 65 years. Factually this is incorrect because the appointment of the first respondent as Chairman was on 13-8-82. Thereafter the same appointment came to be extended from time to time. Each of those extensions cannot constitute a new appointment. It is one appointment which is being continued from time to time. Legally speaking, also, the reasoning of the High Court is wrong because it leads to unconstitutionally. In that case persons who attained the age of 65 years after the amending Act would be obliged to retire while the older persons like the first respondent would remain in office. This will clearly amount to discrimination. Thus either by way of Section 5(6) of the Electricity (Supply) Act, as amended or under Section 3(1) of the amending Act, the first respondent would cease to hold office. As a matter of fact, Section 3 has been introduced only by way of abundant caution. It is also to be noted that Section 3(1) contains a 'non-obstante' clause and it renders any udgment, contract/ order or contrary to this sub-section void. The Legislature has introduced the non-obstante clause to put the matter beyond doubt.

22. This legislation is general in its terms and its application. The fact that at the relevant time of the amending Act or even the ordinance, the first respondent alone was affected is no ground to hold that it is a single person's legislation. This court, as a matter of fact, has upheld such pieces of legislation in Chiranjit Lal Chowdhury v. Union India, 1950 SCR 869 : (AIR 1951 SC 41), (particularly the passages occurring at pages 378-79) (of SCR): (at p. 45 of AIR). On the basis of its ruling it is submitted that even if it is held a single person's legislation, if he constitutes a class by himself, such a legislation would be valid. The same principle is stated in Raghubir Singh v. State of Ajmer (Now Rajasthan) 1959 Supp (1) SCR 478: (AIR 1959 SC 475) Again in Lachhman Das on behalf of Firm Tilak Ram Ram Bux v. State of Punjab, (1963) 2 SCR 353 at p. 374 : (AIR 1963 SC 222 at p. 232), it has been held that a law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it. In Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, (1964) 1 SCR 561 : (AIR 1963 SC 1638) where a legislation was confined only to one of the temples, it was held not to be in violation of Article 14 of the, Constitution. To the similar effect are S. P. Mittal v. Union of India, (1983) 1 SCR 729: (AIR 1983 SC 1) and in State of Uttar Pradesh v. Lakshmi Ice Factory, 1962 Supp (3) SCR 59 : (AIR 1963 SC 399). Again, in Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna v. State of Bihar (1988) 3 SCR 311 : (AIR 1988 SC 1136), even though the Act was general in terms and applied to only one of the institutions at the relevant time, having regard to the nationalisation,'it was upheld. The case of D. S. Reddy v. Chancellor, Osmania, University, (1967) 2 SCR 214 : (AIR 1967 SC 1305), has no application to the facts of the case because though the Act was general in its

application, yet, it applied to only one individual who was then occupying the post of Vice-Chancellor of Osmania University. Thus, it is submitted as read from the statement of 'Objects and Reasons' of the amending Act, if the policy to superannuate at the age of 65 is in order to give full effect to the policy, provision will have to be made for those who have attained the age of 65 also. This is what Section 3(1) aims at.

23. Looking it from that point of view this is a legislation which applies to all. The chance that the first respondent was affected at the relevant time by introduction of this legislation will not in any manner render it violative of Article 14 on the ground that it is a single person's legislation.

24. If the law is settled that no mala fides could be attributed to the Legislature, an argument that the amendment has been passed only with a view to punish the first respondent is not available to the first respondent. The next submission of the learned counsel is that in the place of first respondent, Chauhan had come to be appointed as Chairman, therefore, he ought to have been impleaded as a party. The effect of non-impleading Chauhan will be fatal to the writ petition as laid down in State of Kerala v. Miss Rafia Rahim, AIR 1978 Kerala 176 (FB), as well as Padmraj Samarendra v. State of Bihar, AIR 1979 Patna 266 (FB). In both the cases where the petitioners were challenging the selection, it was held the selectees were necessary parties as they were affected by the decisions of the Court. Therefore, if they are not impleaded no relief could be granted in favour of the writ petitioners even though on merits the petitioners could succeed.

25. Even otherwise, today, the principle of natural justice has assumed great importance. If by reason of the decision of the Court Chauhan is ultimately affected, and if that decision is rendered without hearing Chauhan, it would amount to a clear violation of the principle of natural justice. An order passed in violation of that salutory provision of natural justice would be a nullity. As a matter of fact, if Supreme Court passes an order that would amount to nullity is what this Court has laid down in A. R. Antulay v. R. S. Nayak, 1988 Supp (1) SCR 1 at p. 59: (AIR 1988 SC 1531 at p. 1553). Therefore, for the failure to implead Chauhan the writ petition was liable to be dismissed. The contrary view taken by the High Court that though he is a proper party but not a necessary party, or that Chauhan came to be appointed "until further orders" and, therefore, he need not be impleaded, is wrong.

26. Mr. Kapil Sibal took us through the background in which the impugned ordinance and the Act came to be passed. He would submit that it had a great bearing on the legal issues involved in this case. The State of Himachal Pradesh tried its level best to get rid of the services of the first respondent. At first it issued a notification whereby the right to continue as Chairman was interfered with. That was questioned in W.P. 123 / 90. Finding the judgment was going against the State, the State withdrew the notifications. Thereafter, the State came forward with charge memo under suspension order. They are pending in writ proceedings and an interim stay of suspension is in operation. At this stage, the ordinance is brought in because the executive method failed to bring about the termination of his services. At the relevant date of the ordinance no person other than the first respondent was affected. In fact, the State while writing for sanction for issue of ordinance specifically mentions about this respondent by name. But at the same time it would conceal from Govt. of India the fact of the matter being sub judice. Though the Govt. of India would request exploration of the possibility of amending the rules under Section 78 of the Electricity (Supply) Act because the rule could not have retrospective operation and the first respondent could not be reached by such an amendment of the rules resort is had to the ordinance making power under Article 213 of the Constitution.

27. Section 3(1) was aimed at only against this respondent. This is undeniable. While the ordinance was under challenge in writ petition before the High Court the amending Act came to be passed. This background has to be kept in mind to appreciate the submissions made on behalf of this respondent.

28. Under the Electricity (Supply) Act, there are two provisions dealing with the appointments. One Section 5 and the other is Section 8. The former Section deals with initial appointment whilst Section 8 deals with reappointment.

29. What the amending Act does by prescribing the disqualification under Section 5 (6) is to prevent future appointments after attaining the age of 65 years. But, even, here, there is no automatic cessation of office on attaining the age of 65 years. While there is a power for removal when a Member or Chairman of the Electricity Board becomes a Member of Parliament, he could be removed under Section 10, there is no such power in the event of the Member or Chairman incurring the disqualification of age, namely, the attainment of 65 years. Hence by merely amending the law, it cannot be urged that the first respondent having attained the age of 65 ceases to be a Member or Chairman of the Electricity Board. Therefore, Section 5 (6) will not help the appellant.

30. Coming to Section 8 that deals with reappointment. Such a reappointment is governed by the terms and conditions as prescribed. The word "prescribed" means prescribed under the rules. The rule making power is contained under Section 78(2)(a). Rule 4 as originally stood governed the reappointment stating it could be under such conditions as the State Govt. may from time to time, by order, direct. There is a proposal to amend the rule. Even under those rules namely Rules 3 and 4, the reappointment is thought of. While care has been taken in this regard no amendment has been effected to Section 8 prescribing the age limit of 65. As a matter of fact, for a tenure appointment under Section 8, there never be a prescription of age of superannuation. Such an appointment is beyond the pale of Section 5. Thus, it is submitted Sections 5, 8, 10, 78(2)(a) provide a scheme more so when Section 10 does not prescribe the age as a disqualification.

31. In no statute an upper age limit could ever be a disqualification, of course, the minimum age of recruitment can be prescribed. But not an upper age limit for a tenure appointment. It is common knowledge that only experienced persons even after retirement are appointed as Chairman, having regard to the vast experience and wide knowledge.

32. On the factual aspect, it is submitted by the learned counsel, though the notifications dated 12-5-86 and 12-6-89, use the word "extension" it is nothing but reappointment. As a matter of fact, the counter affidavit of the State makes it clear that the order of reappointment came to be passed under Section 5 read with Section 8, Rule 4. The statement of 'Objects and Reasons' also makes a reference to Section 8. Thus, both legally and factually Section 5 (6) cannot help the State.

33. Much cannot be made of the words "or being" brought in by way of amendment of Section 5 (6). This only connotes the attainment of age of 65 subsequent to the appointment. When the Constitution uses similar language both under Articles 102 and 191, it made it clear that under both the Articles 101 as well as 190, the seat falling vacant restrospectively on the incurring of such a disqualification there is no automatic cessation provided under Section 10. Thus the words "has attained" occurring under Section 5 (6) assumes great importance because there is no provision under Section 10 prescribing age of disqualification and the consequent removal. Even under Section, it supposes a person being appointed before the age of 65 and attaining the age of 65. Such a contingency does not arise here. Therefore, it is submitted that Sections 5(6) and 3(1) of the

amending Act should be read together. As regards the amending Act, it cannot be denied that on the date of ordinance it applied only to the respondent and nobody else. While Seetion 5(6) takes care of future appointment Section 3(1) deals with reappointment. On the date of ordinance Section 5 (6) would apply to nobody else because this respondent alone was holding a tenure appointment. The legislation was brought about only with a view to unseat the respondent. There can be a single person's legislation provided it is in furtherance of legislative objects. The burden is on the State to prove the reason or the basis for this legislation. Such a burden had not been discharged.

34. Certainly, the reappointments stand apart. They constitute a class by themselves. A person initially appointed cannot be compared with a reappointee. The former failing under Section 5(6) and the latter falling under Section 8. If the respondent had been appointed after the age of 65, he forms a class by himself. Therefore, the State will have to be sure what exactly is the public purpose served or a social or economic obligation. Further, as a matter of fact, this was the test applied in all single person's legislation. In all such cases whenever it was upheld either it was on the ground of mismanagement of the institution or a mill, or because it was in furtherance of a public purpose or a social or economic obligation. In fact, in Ram Prasad Narayan Sahi v. State of Bihar, 1953 SCR 1129: (AIR 1953 SC 215) the mill was mismanaged. In Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna v. State of Bihar, (1988) 3 SCR 311 : (AIR 1988 SC 1136) , the institute was not only mismanaged, of course, the policy was to nationalise all the institutions. Similarly, in Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279: (AIR 1958 SC 538), and in Lachhman Das on behalf of Firm Tilak Ram Ram Bux v. State of Punjab, (1963) 2 SCR 353 : (AIR 1963 SC 222), the same test was applied. Likewise in Swastik Rubber Products Ltd. v. Municipal Corporation of the City of Poona, (1982) 1 SCR 729: (AIR 1981 SC 2022), it was a case of mismanagement of industrial project. The case of Tilkayat Shri Govindlaiji Maharaj v. State of Rajasthan, (1964) 1 SCR 561.: (AIR 1963 SC 1638), Nathdwara Temple where there was misapprobation of jewellery, likewise in the case of Jagannatha Temple. Thus, it is clear but for mismanagement or subserving a public cause or a social or economic obligation, such pieces of single person's legislation would not have been upheld.

35. Certainly, there may be a legislation in general application and it may apply to an individual; but that is not the case here. On the date of the coming into force of the Act this respondent alone was affected. The amending Act itself makes a discrimination without any justification or rationale. If the respondent is treated along with others, it would amount to treating unequals as equals.

36. Thus, it is submitted two principle will have to be applied (1) the respondent having been appointed under Section 8 constitutes a class; and (2) if the appointment of the respondent is sought to be brought out under Section 5 it will bring a discrimination treating unequals as equals. Therefore, the law will have to be struck down as discriminatory and not that this respondent is attributing mala fides to the Legislature.

37. Of course, in the Atlas Cycle Industries Ltd., Sonepat v. Their Workmen, 1962 Supp (3) SCR 89: (AIR 1962 SC 1100) case, it applied only to one individual. But that case is distinguishable for two reasons - (a) the benefit of extension was granted to the individual and it was not an adverse order, and (b) a number of industrial adjudications were pending before the authority whose permission was extended.

38. As regards impleading Chauhan, it is submitted where this respondent would choose to question the vires of the ordinance in the Act, there was no need to implead Chauhan at all. As a matter of fact, this respondent could not have asked for any relief against Chauhan. Even otherwise, for an

effective adjudication of the points in issue there is no need for the presence of Chauhan. In support of the submission reliance is placed on A. Janardhana v. Union of India, (1983) 3 SCC 601 at p. 626 : (AIR 1983 SC 769 at p. 785).

39. Besides, the order of appointment of Chauhan it is stated "consequent until further orders". Therefore, the Court could grant relief even in his absence. The cases the side has cited can have no application because they related to selection under one scheme only on the displacement of selectees. The writ petitioners could be granted relief. In fine it is submitted that where substantial justice has been done by allowing the first respondent in office until expiry of his term in July, 1992, by exercise of power under Article 136 this Court will not interfere as laid down in Pritam Singh v. The State, (1950) 1 SCR 453: (AIR 1950 SC 169)..

40. Mr. Shanti Bhusan in his elaborate reply would state that Section 5(2) is the only source of appointment - both initial as well as reappointment. Section 8 only deals with tenure. Section 3(1) of the amending Act corresponds to Articles 101(3) or 190(3). Therefore, it brings about an automatic cessation of office.

41. It is incorrect to contend that for a tenure post, it is not proper to prescribe an age limit. Instances are not wanting where statutory provisions have been made to such an effect. For instance, Article 224 of the constitution in relation to the Addl. Judge. Likewise Section 8 of the Administrative Tribunals Act. Disqualification on account of age, therefore, could be prescribed statutorily. Having regard to the words "or being" occurring under Section 5(6), the Section alone would be enough to deprive the first respondent of his office after attaining the age of 65. In this regard the learned counsel cites Ainerican Jurisprudence (2nd Ed) Vol 63, Para 42.

42. The purpose of Section 3 is two-fold one, by way of abundant caution it provides for cessation of office, though Section 5(6) itself would be enough. Secondly, it takes away the right to emoluments after attaining the age of 65 and substituting by compensation, notwithstanding the contract to the contrary. Section 10(1)(d) is only an enabling provision. That does not, in any manner, affect the operation of Section 5(6). It is incorrect to submit that this is a single person's legislation. It is of general, application and it so happened on the relevant date that the first respondent came to be affected. Lastly, it is submitted on the basis of B. Prabhakar Rao v. State of Andhra Pradesh, 1985 Supp SCC 432: (AIR 1986 SC 210), that there is no need to dislodge Chauhan from office, after all, he had been continuing so long. He may be allowed for the remaining period of the tenure of the first respondent. The Court itself could fix the compensation instead of even relegating the matter to the State.

43. Having regard to the above arguments, the following points arise for our determination:-

(i) The power of appointment under Section 5 and the scope of Ss. 8 and 10 of the Electricity (Supply) Act, 1948.

(ii) The effect of Amendment under Section 5(6) of the said Act.

(iii) The scope of Section 3 of Electricity (Supply) (H.P. Amendment) Act of 1990. Whether it is violative as single person's legislation.

(iv) Whether the failure to implead Chauhan would be fatal to the writ petition.

We will now deal with these points. In the normal course of events the first

> respondent would have continued, by virtue of his extension, up to 25-7-92. However, consequent to the Assembly Elections held in the beginning of 1990, there was a change of the Government. The fourth respondent became the Chief Minister. From then on, the first respondent met with an avalanche of misfortune. He received successive blows. Hence he was obliged to wage legal battles. That is why the learned counsel for the first respondent would urge that all these attempts were only with the sole aim of removing the first respondent from office. The Executive having failed in its attempt resorted to legislative process. It is unethical to do so. We are afraid, we cannot decide the case on ethics. We are to judge the law and the correctness of the legal provisions as we see then. Therefore, we are to move from the ethical plane to the legal plane.

44. In this case the State wants to introduce the age of superannuation prescribing an upper age limit of 65 for the Members and Chairman of the Electricity Board. As a matter of fact, hitherto, no such limit was found in the Electricity (Supply) Act, 1948 (hereinafter referred to as the Supply Act). Before the introduction of the amendment, the appellant State of Himachal Pradesh wrote on 22-6-90 to the Government of India, Ministry of Home Affairs for procuring prior instructions from the President of India, as envisaged in clause (1) of Article 213 of the Constitution. The subject matter of the proposed ordinance falls under item 38 of List III (List III of the Seventh Schedule of the Constitution of India). Item 38 deals with electricity. Where, therefore, it was proposed to amend S. 5 of the Supply Act (Central Act 54/48), in its application to the State of Himachal Pradesh it had to be reserved for the consideration of the President under Article 254(2) of the Constitution. This was because if a Bill containing similar provision after having been passed by the State Legislature required to be so reserved for the consideration of the President of India. However, it is important to note that in this letter it was categorically stated that in most administrative systems of the world an outer age limit is provided. Such a provision is found with reference to judicial officers and civil posts and is entrenched in administrative and constitutional systems. Having regard to the desirability of providing for a terminal point of time beyond which a Chairman and the Members of the State Electricity Board must cease to hold office by operation of the statute, it was proposed to prescribe the age limit at 65 for retirement of the Chairman/ Members of the Board.

45. The same point is reiterated as seen from the statement of 'Objects and Reasons' for the Bill No. 6 of 1990, which later on became Act 10 of 1990. We will now quote the relevant portion of the said statement of Objects and Reasons :

> "Section 8 of the Electricity (Supply) Act, 1948 (Act No. 54 of 1948) provides that the Chairman and other Members of the State Electricity Board shall hold office for such period and shall be eligible for reappointment under such conditions, as may be prescribed. In other words no provision has been made in respect of maximum age or period up to which a person may serve as Chairman or Member of the Board. Indeed, the provision after mandatory age of superannuation or specification of age beyond which an incumbent must cease to hold office is vital and essential. In most administrative systems of the world, an outer age limit is provided. In our own country the concept of the age of superannuation, in other words the concept of the terminal point at which a person should cease to hold judicial offices and civil posts, are entrenched in our administrative and constitutional systems. Public policy requires that the concept of superannuation should be applied to civil posts and offices. It was, therefore, decided to prescribe the age of 65 years for retirement of the Members of the Electricity Board, as the retirement age of High Court Judges,

> Members of the Administrative Tribunal, Members of Public Service Commission and other high functionaries has also been fixed. This necessitated the amendments in the Electricity (Supply) Act, 1948 in its application to the State of Himachal Pradesh."

46. Therefore, what does the State desire to do? It wants to embark on a policy of retirement of the Chairman / Members of the Electricity Board after attaining the age of 65 years. This Court is least concerned with the wisdom of the policy.

47. Certainly, no one could quarrel with the introduction of that measure as of policy. In fact this Court has repeatedly recognised such a right of the State. It is enough if we quote K. Nagaraj v. State of Andhra Pradesh, AIR 1985 SC 551. In para 7, the Court had occasion to observe thus

> "Barring a few services in a few parts of the world as, for example, the American Supreme Court, the terms and conditions of every public service provide for an age of retirement. Indeed, the proposition that there ought to be an age of retirement in public 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 of our public services establishes its necessity, not less than its reasonableness. Public interest demands that there ought to be an age of retirement in public services. The point of the peak level of efficiency is bound to differ from individual to individual but the age of retirement cannot obviously differ from individual to individual for that reason. A common scheme of general application governing superannuation has therefore to be 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 public administrator has to counterbalance conflicting claims while determining the age of superannuation. On the one hand, public services 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 embers of the services and the younger section of the society. The balancing of these conflicting claims of the different segments of society involves minute questions of policy which must, as far as possible, be left to the judgment of the executive and the legislature. These claims involve considerations of varying 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. We do not suggest that every question of policy is outside the scope of judicial review or that, necessarily, there are no manageable standards for reviewing any and every question of policy. Were it so, this Court would have declined to entertain pricing disputes covering as wide a range as case to mustard-oil. If the age of retirement is fixed at an unreasonably low level so as to make it arbitrary and irrational, the Court's interference would be called for, though not for fixing the age of retirement but for mandating a closer consideration of the matter. "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; E. P. Royappa v. State of Tamil Nadu, (1974) 2 SCR 348 : AIR 1974 SC 555". But, 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 and the legislature have to undertake."

48. For adumbrating this policy a legislation is enacted by the State. It is not for this Court to find out whether there was any need for such a legislation. Of course, for lack of legislative competence or for violation of the right to equality under Article 14 etc. the validity of the legislation may be scrutinised. But, certainly, that is far from saying the Court could examine the legislation from the point of view that it came to be passed with mala fide intention. By long established practice, which has received approbation through authorities of this Court, it has always refrained from attributing rnala fides to the Legislature. In fact, such a thing is unknown to law. Here again, we can usefully refer to the case K. Nagaraj v. State of Andhra Pradesh, AIR 1985 SC 551. In para 36 it is stated as:-

> "..... The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if, none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice is unknown in the field of legislation."

49. It is in this background, therefore, we propose to determine the above points.

> 1. The Power of Appointment under Section 5 and Scope of Sections 8 and 10 of the Electricity (Supply) Act, 1948.

50. The Electricity (Supply) Act, 1948 (hereinafter referred to as the Act) is to provide for rationalisation of the production and supply of electricity and generally for taking measures conducive to electrical department. Chapter Ill of the said Act deals with the State Electricity Boards, Generating Companies, State Electricity Consultative Councils and Local Advisory Committees. Section 5 reads asunder:-

> "5. Constitution and composition of the State Electricity Boards.- (1) The State Government shall, as soon as may be after the issue of notification under sub-section (4) of Section 1, constitute by notification in the Official Gazette a State Electricity Board under such name as shall be specified in the notification.
>
> (2) The Board shall consist of not less than three and not more than seven members appointed by the State Government.
>
> (3) ﷺ.. omitted by Act 57 of 1949, S. 4.
>
> (4) Of the members-
>
> (a) one shall be a person who has experience of, and has shown capacity in, commercial matters and administration;
>
> (b) one shall be an electrical engineer with wide experience; and
>
> (c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electricity supply undertaking.
>
> (5) One of the members possessing any ot the qualifications specified in sub-section

(4) shall be appointed by the State Government to be the Chairman of the Board.

(6) A person shall be disqualified from being appointed or being a member of the Board if he is a member of (Parliament) or of any State Legislature or any local authority.

(7) No act done by the Board shall be called in question on the ground only of the existence of any vacancy in, or any defect in the constitution of, the Board."

51. Thus, it will be seen that State Government is to constitute, by notification, the State Electricity Board. The minimum member of the Board shall be 3 while the maximum shall be 7. The Chairman could be any one of the members who possesses such qualifications as prescribed under sub-sec. (4). Sub-section (6) talks of disqualification- (1) member being appointed, and (2) or being a member of the Board if he is a member of Parliament or of any State Legislature or any local authority.

52. Prior to the amendment in 1960, this -disqualification must have been incurred within the 12 months last preceding. What is important for our purpose is there is a disqualification for appointment in future when it says "shall be disqualified from being appointed". Equally, "or being" means if such a disqualification is incurred after the appointment during the tenure of membership of the post. Therefore, the words "or being" have great significance.

53. We will come to the effect of amendment of Section 5(6) later after dealing with the relevant sections of this Act. Section 8 reads as follows:-

"Term of office and conditions for reappointment of members of the Board - The Chairman and other members of the Board shall hold office for such period, and shall be eligible for re-appointment under such conditions, as may be prescribed."

54. A careful reading of the Section will clearly disclose the section merely talks of term of office and conditions for reappointment. Those conditions may be as prescribed. The word prescribed has come to be defined under Section 2(9) of the said Act. "Prescribed" means prescribed by rules made under this Act. Nowhere in this Section, in our considered view, an additional power for appointment is conferred. At best it could be said that it merely lays down the eligibility for reappointment. As stated above, that eligibility must be as per conditions prescribed under the rules. As a matter of fact, when it says "shall hold the office for such period" it means the period as prescribed under the rules. Beyond this, we are unable to persuade ourselves to come to the conclusion that there is any separate power for reappointment. It is not even necessary to provide for such a separate power. The reason why we say so is Ss. 14 and 16 of Central General Clauses Act provide for such a power. Section 16 deals with the power of appointment carrying with it the power of dismissal, while S. 14 states any power conferred unless a different intention appears could be exercised from time to time as occasion requires. Where, therefore, Section 5 provides for a power to appoint, certainly, that power could be exercised from time to time as occasion requires. Thus one need not search for a separate provision in this regard. We may also note that the prescriptions in relation to the term was contained under Electricity (Supply) (HP Amendment) Act, 1990. Under Rule 4 of the said Rule, it is stated thus: -

"4. Term of Office - (1) The Chairman and other Members shall be appointed by the State Government and hold office for such period and shall, on the expiration of their terms office, be eligible for reappointment under such conditions as the State

Governmerit may from time to time, by order direct. (2) No whole-time Member so long as he continues as Member shall accept any assignment other than that of the Board without the prior permission of the Government."

55. Even there no further prescription is found excepting as laid down under the conditions stipulated by the State Government from time to time.

56. Then we come to Section 10. That Section deals with removal or suspension of members as follows:-

"Removal or suspension of members - (1) The State Government may suspend irom office for such period as it thinks fit or remove from office any member of the Board who-

(a) is found to be a lunatic or becomes of unsound mind;or

(b) is adjudged insolvent; or

(c) fails to comply with the provisions of Section 9; or

(d) becomes . or seeks to become a member of Parliament or any State Legislature or any local authority; or

(e) in the opinion of the State Government-

(i) has refused to act; or

(ii) has become incapable of acting; or

(iii) has so abused his position as to render his continuance on the Board detrimental to the interests of the general public; or

(iv) is otherwise unfit to continue as a member; or

(f) is convicted of an offence turpitude.

(2) The State Government may suspend any member pending an inquiry against him.

(3) No order of removal shall be made under this section unless the member concerned has been given an opportunity to submit his explanation to the State Government, and when such order is passed, the seat of the member removed shall become vacant and another member may be appointed under Section 5 to fill up the vacancy.

(4) A member who has been removed shall not be eligible for reappointment as member or in any other capacity to the Board.

(5) If the Board fails to carry out its functions, or refuses or fails to follow the directions issued by the State Government under this Act, the State Government may remove the Chairman and the members of the Board and appoint a Chairman and members in their places."

57. In our view this Section confers an enabling power on the State Government to take punitive action against a member of the Board who falls under any one of the clauses (a) to (f). The fact that it is punitive is clear because sub-section (3) contemplates giving an opportunity to offer an explanation and thereafter removing him. Once so removed, he is ineligible for reappointment either as a Member or any other capacity in the Board.

58. As to why after amending Section 5(6) the State has not correspondingly amended Section 10 so as to include cases of Members or Chairman attaining the age of 65, we will consider while dealing with the scope of amendment to Section 5(6).

59. The next Section that has to be looked at is Section 78, i.e. the rule making section. Sub-section (1) of Section 78 as is usual talks of the State Government making rule giving effect to the Act. Sub-section (2), catalogues without prejudice to the generality of this power, as to what all the rules may provide for. Certainly it cannot be contended that the items catalogued in sub-section (2) are exhaustive. It is merely illustrative. Under subsection (2)(a) it is stated that the rules may provide for (i) "the powers of the Chairman and the term of office of the Chairman and other members of the Board, (ii) the conditions under which they shall be eligible for reappointment, and (iii) their remuneration, allowances, and (iv) other conditions of service."

60. One thing that is striking is rules may themselves provide for eligibility for reappointment. In this connection it may not be out of context to refer to the letter of the Ministry of Home Affairs asking the State to explore the possibility of making rules instead of amending the Act. This was at a time when the State Government sought the assent of the President. Where, therefore, rules could provide for the conditions for eligibility for reappointment, equally it should follow by amending the Act such eligibility for reappointment can be provided. In the conspectus of this Section it would be thus clear - (1) there is only one source of power of appointment contained under Section 5; (2) there is no separate power in relation to reappointment under Section 8; (3) Section 10 is only an enabling power for taking punitive action against such of those members who fall under clauses (a) to (f) of the said Section; and (4) Section 78(2)(a) confers a power upon the State Government to frame rules.

The effect of Amendment under Section 5(6) of the said Act. With this we pass on to the amending Section of 5(6), by Act 10 of 1990. The amendment was carried out to Section 5(6) is as follows. This can be brought out. succinctly by a tabulated statement:-

STATEMENT OF PROVISIONS LIKELY TO BE AFFECTED BY THE

AMENDMENT BILL

Section	Provisions as exist	Provisions as will stand after the enactment of the Bill
(1)	(2)	(3)
5.	Constitution and Composition of State Electricity Board -	5. Constitution and Composition of State Electricity Board -
	(1) The State Govt. shall, as soon as may be after the issue of the notification under sub-section (4) of Section 1, constitute by notification in the Official, Gazette a State Electricity Board under such name as shall be specified in the notification.	(1) The State Government shall, as soon as may be after the issue of the notification

under subsection (4) of Section 1, constitute by notification in the Official Gazette a State Electricity Board under such name as shall be specified in the notification.	
(2) The Board shall consist of not less than three and not more than seven members appointed by the State Govt.	(2) The Board shall consist of not less than three and not more than seven members appointed by the State Govt.
(3) x x x x x	(3) x x x x x
(4) Of the members -	(4) Of the members-
(a) one shall be person who has experience of, and has shown capacity in, commercial matters and administration,	(a) one shall be person who has experience of, and has shown capacity in, commercial matters and administration,
(b) one shall be an Electrical Engr. with wide experience, and	(b) one shall be an Electrical Engr. with wide experience, and
(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electric supply undertaking.	(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electric supply undertaking.
(5) One of the members possessing of the qualifications specified in sub-sec. (4) shall be appointed by the State Govt. to be the Chairman of the Board.,	(5) One of the members possessing of the qualifications specified in sub-sec. (4) shall be appointed by the State Govt. to be the Chairman of the Board.
(6) A person shall be disqualified from being appointed or being a member of the Board if he is a member of Parliament or any State Legislature or any local authority.	(6) A person shall be disqualified from being appointed or being a member of the Board if he has attained the age of 65 years or is a member of Parliament or any State Legislature or any local authority.

61. The effect of amendment to S. 5(6) is that it introduces a new disqualification "if he has attained the age of 65 years". This disqualification is not only for being appointed, namely, with reference to future appointment, but even with regard to a supervening disqualification covering cases of those who have attained the age of 65 years and being a member of the Board. As already stated, the words "or being" are of considerable import. As to what is the meaning of these words can be gathered by two rulings of this Court which came to deal with the similar language employed. (Article 102 in relation to Members of Parliament). In Election Commission, India v. Saka Venkata Subba Rao, 1953 SCR 1144 (at p. 1157) : (AIR 1953 SC 210 at p. 215) it was observed as under :-

> "The use of the word "become" in Articles 190(3) and 192(1) is not inapt, in the context, to include within its scope pre-existing disqualifications also, as becoming subject to a disqualification is predicated of "a member of a House or Legislature", and a person who, being already disqualified, gets elected, can, not inappropriately, be said to "become" subject to the disqualification as a member as soon as he is elected. The argument is more ingenious than sound. Article 19 1, which lays down

> the same set of disqualifications for election as well as for continuing as a member, and Article 193 which prescribes the penalty for sitting and voting when disqualified, are naturally phrased in terms wide enough to cover both pre-existing and supervening disqualifications; but it does not necessarily follow that Articles 190(3) and 192(1) must also be taken to cover both. Their meaning must depend on the language used which, we think, is reasonably plain."

62. In Pashupati Nath Sukul v. Nem Chandra Jain, (1984) 2 S CC 404 at p. 417, in para 18: (AIR 1984 SC 399 at p. 406, Para 17) it is stated as under:-

> "Article 191 of the Constitution prescribes the disqualifications for membership of the Legislative Assembly or Legislative Council of a State. On the incurring of any such disqualification a member of a Legislative Assembly or a Legislative Council ceases to be a member thereof."

Therefore, it will follow that once this disqualification of attaining the age of 65 years is incurred, there is an automatic cessation from holding office. This is because Section 5(6) contains the same phraseology as is found under Articles 102 and 191. In our considered view Section 5(6) applies to initial appointment as well as to those continuing in appointment. We will also usefully refer to American Jurisprudence (Vol. 63), at para 42, it is stated thus:-

> "Disqualification arising after election and before or during term.- Eligibility to public office is of a continuing nature and must exist at the commencement of the term and during the occupancy of the office. The fact that the candidate may have been qualified at the time of his election is not sufficient to entitle him to hold the office, if at the time of the commencement of the term or during the continuance of the incumbency he ceases to be qualified."

63. It is rather unfortunate that the High Court has missed the true import of the words "or being". Therefore, we are unable to subscribe to the findings of the High Court when it states "the provision lays down the age of superannuation for a member prospectively which disqualifies a person from being appointed or being a member after he attains the age of 65 years" by itself it does not affect those who had been given appointment after having attained the age of 65 years. The Legislature was conscious of it, but thought ol enacting a provision like Section 3 on that account.

64. We are unable to see any warrant for holding that Section 5(6) as amended having regard to the use of language "or being" would in any way exclude such of those members or even the Chairman who have attained the age of 65 years at the time of appointment. According, we conclude that Section 5(6) itself would be enough to hold that on the coming into force of the amending Act, namely, 13-7-90 the first respondent ceases to hold the office by the rigour of law, as rightly contended by Mr. Shanti Bhusan, learned.counsel for the appellant.

65. Now we shall proceed to consider as to why a corresponding amendment has not been provided by incorporating this disqualification. The argument of Mr. Kapil Sibal is that the attaining of 65 years is not to be considered as disqualification as otherwise Section 10 would provide for such a situation. It has already been seen that Section 10 merely confers an enabling power to take punitive action. It is one thing the State has power to take punitive action, it is entirely different thing to say that in law the first respondent ceases to hold office on the, incurring of the disqualification of attainment of 65 years of age. If Section 5(6) itself brings about a cessation of office, that sub-

section being self-executory in nature, there is no need to provide for the same under Section 10 once over again. Merely because the parent Act (Central Legislation) provides for a disqualification on account of becoming a Member of Parliament, State Legislature or Local Board, that does not mean there must be a corresponding provision incorporating age as well under Section 10. We are unable to agree with Mr. Kapil Sibal. Equally, the contention that Section 5(6) only deals with initial appointment and would not cover a case of reappointment after attaining the age of 65 is wholly unacceptable to us. First of all, as we have stated earlier there is no question any separate power for reappointment under Section 8 and the only power being traceable to Section 5 read with Sections 14 and 16 of the General Clauses Act.

66. Factually we will now consider whether this is a case of reappointment at all. The original order of appointment of the first respondent was on 24-7-1981, first as a Member and as Chairman for a period of 2 vears. These two orders of appointment do not concern very much.

67. The next comes the appointment dated 13-8-1982, when the first respondent came to be appointed as Chairman of Himachal Pradesh State Electricity Board Though during the narration of facts we have referred to this order, it is worthwhile to quote it once over again in full as something material turns on this.

"GOVERNMENT OF HIMACHAL

PRADESH, DEPARTMENT OF

PERSONNEL-II

No. 8-155/73-DP (Apptt. II) Dated Shimla- the 13th Aug., 1982.

NOTIFICATION

In exercise of the powers conferred by Section 5 of the Electricity (Supply) Act, 1948, the Governor, Himachal Pradesh, is pleased to appoint Shri Kailash Chand, Retd. Chief Engineer (Irrigation) Punjab, whose appointment as Member, H. P. State Electricity Board, has been notified vide Notificatilon of even number, dated the 24th July, 1981, as Chairman, H. P. State Electricity Board for a period of five years, with effect from 25th July, 1981. Detailed terms and conditions of his appointment has already been issued separately.

This is in supersession of this Deptt. Notification of even number, dated the 24th July, 1981.

By order

K. C. Pandeya

Chief Secy. to the Govt. Of

Himachal Pradesh."

68. As seen from the above, the number of the order is 8-155/73-DP (Apptt-II). The next order of extension bears the same number dated 12-5-86. That also clearly states "in continuation of this Department's notification of even number dated 13-8-82, the Governor of Himachal Pradesh is pleased to extend the appointment". This extension is for a period of three years. Then comes the

last extension on 12-6-89 which also bears the number 8/155/DP (Apptt-II). Again, the notification reads "in continuation of this Department's notification of even number dated 12-5-1986, the Governor of Himachal Pradesh is pleased to extend the appointment". Therefore, where the original appointment dated 12-5-86 is extended from time to time, it is futile to contend that these are fresh appointments. While we are on this we have also got to refer to the counter affidavit of the State filed in the writ petition before the High Court. In para 12 it is stated as follows: -

> "The contents of para 12 of the petition, as stated, are wrong and hence denied. It is emphatically denied that the power was exercised mala fide and was colourable exercise of power or was a fraud on power. The power has been exercised within the legal ambit of Section 5 read with Section 8 of the. Act and the Rules framed thereunder."

69. From this we are unable to see how any help could be derived by the first respondent to base his arguments that the power of reappointment is traceable to Section 8. This aspect of the matter had already been dealt with by us.

70. The statement of 'Objects and Reasons' makes a reference to Sec. 8 But it does not again mean there is an independent power of appointment. What the above extract of counter-affidavit and reference to Section 8 mean is denial of mala fide. Besides, hitherto no outer age limit has been prescribed for the post of Chairmanship. It is that which is sought to be prescribed now. The reference to Section 8 means only the "term" and nothing else.

71. We are also unable to accept the arguments advanced on behalf of the first respondent that for a tenure post no period can be fixed. Instances are not wanting in this regard. Therefore, rightly reference is made by Mr. Shanti Bhushan to Article 224 of the Constitution extract of which is given below:-

> "224. Appointment of additional and acting Judges.- (1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.
>
> (2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.
>
> (3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of (sixty-two years)".
>
> Again, a reference can be made to Section 8 of the Administrative Tribunals Act. That Section reads as follows :-
>
> Term of Office - The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for reappointment for another term of five years :

Provided that no Chairman, Vice-Chairman or other Members shall hold office as such after he has attained -

(a) in the case of the Chairman or Vice-Chairman, the age of Sixty-five years, and

(b) in the case of any other Member, the age of sixty-two years."

72. Therefore, where the State has taken a policy decision to prescribe an outer age limit for the Members or the Chairman of the Electricity Board it is perfectly legal.

The scope of Section 3 of Electricity (Supply (H. P. Amendment) Act, 1990 and whether it is bad as single person's legislation.

Section 3 of the Amendment Act reads as follows :-

"3.(1) Notwithstanding anything to the contrary contained in any provisions of the Electricity (Supply) Act, 1948, rules, regulations or bye-laws made thereunder or in any judgment, decree or order of the Court or in any contract, any appointment made before the commencement of the Electricity (Supply) (Himachal Pradesh Amendment) Act, 1990, whereby a person has a right to continue as a member of the Board after attaining the age of 65 years, shall be void; and on such commencement he shall be deemed to have ceased to hold office of the member of the Board.

(2) On ceasing to hold office of the member of the Board under sub-section (1) such member shall be entitled to compensation as may be determined by the State Government; but such compensation shall not exceed the amount equivalent to the amount of salary and allowances payable to him for his unexpired term."

73. One thing that is significant is it contains a 'non obstante' clause. An aplpointment of a member of the Board made prior to the commencement to this Act namely, 13-7-90 (giving retrospective operation) which gives a right to continue as a member after attaining the age of 65 years, that appointment is rendered void.

74. This non obstante clause is a sweep. It applies (1) notwithstanding anything to the contrary in any provisions of the Electricity (Supply) Act; (2) rules and regulations, byelaws made therein; (3) any judgment, decree or order of the Court; and (4) any contract.

75. Once it is so rendered void, the law deems that he has ceased to hold office of the Member of the Board. By a reading of the Section we are unable to conclude how Section 3(1) would fail to apply to a person who on the date of the commencement was already more than 65 years. This line of reasoning adopted by the High Court does not appeal to us. The Section nowhere makes a distinction between those on the date of the enactment are "below" or "over" 65 years of age. Such a distinction is totally unwarranted. The crucial question to be asked is whether the particular incumbent is continuing after the attainment of 65 years of age, if that question is answered in the affirmative there is a cessation of office, in view of the terms of that Section. The contrary conclusion would lead to strange results. Those who are appointed prior to the Act and on the attainment of 65 years on 13-7-90, would vacate the office while a person already 65 on that date and after the passing of the Act notwithstanding the policy of prescribing the age of superannuation of 65 years would continue in the office. The object of introducing an age of superannuation itself is to weed out the older elements and infuse fresh blood so that the administration could function with

vigour.

76. Mr. Kapil Sibal, learned counsel for the first respondent would submit that legislative intention has not been brought out clearly. In this connection we will do well to refer to Francis Bennion's Statutory Interpretation (1984 edn.) at page 237. The distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised as under:-

> "The distinction between the purpose or object of an agreement and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment. "

77. Thus there is a great distinction between the two. While the object of legislation is to provide a remedy for the malady. On the contrary, the legislative intention relates to the meaning from the exposition of the remedy as enacted. For determining the purpose of object of legislation, indeed, it is permissible to look into the circumstances which were prevalent at that time when the law was enacted and which necessitated the passing of that enactment. For the limited purpose of appreciating the background and the antecedents factual matrix leading to the legislation it is open to the Court to look in to the statement of 'Objects and Reasons' of the Bill which accentuated the statement to provide a remedy for the then existing malady. In the case of State of West Bengal v. Union of India, (1964) 1 SCR 371: (AIR 1963 S C 124 1), this Court ruled that the statement of 'Objects and Reasons' accompanied a Bill when introduced in Parliament can be used for the limited purpose of understanding, the background and state of affairs leading up to the legislation. Therefore, we now look into the statement of 'Objects and Reasons'. That clearly brings out the object of the desirability of introducing an age of superannuation as the same is entrenched in our administrative and constitutional systems. With this object in view, Section 3 intends that no one has a right to continue as a member of the Board after attaining the age of 65. Thus, the only conclusion possible is, by reason of appointment if the incumbent is enabled to continue after the attaining the age of 65 years such continuing is rendered void.

78. No doubt as we have stated above, Section 5(6) as amended achieves this purpose. Yet if there is another Section which deals with the same it must be regarded as one introduced by way of abundant caution. In short, Section 3(1) is epexegesis.

79. The arguments advanced by Mr. Kapil Sibal remind us of the eloquent words of Dr. Johnson "There is a wicked inclination in most people to suppose an old man decayed in his intellects. If a young or middle-aged man, when leaving a company does not recollect where he laid his hat, it is nothing; but if the same inattention is discovered in an old man, people will shrug up their shoulders, and say, 'His memory is going'."

80. In our opinion such sentiments can be no answer against the operation of law.

81. It might be argued by the tenure of appointment there is a right to continue; the legitimate expectation has come to be interfered with. In a matter of this kind, as to whether legitimate expectation could be pleaded is a moot point. However, we will now refer to Wade's Administrative Law (6th Edition) wherein it is stated at pages 520-21, as under:-

> "Legitimate expectation : positive effect :- The classic situation in which the principles of natural justice apply is where some legal right, liberty or interest is

affected, for instance where a building is demolished or an officeholder is dismissed or a trader's licence is revoked. But good administration demands their observance in other situations also, where the citizen may legitimately expect to be treated fairly. As Lord Bridge has explained :

Re, Westminster CC (1986) AC 668 at 692. Lord Diplock made a formal statement in the Council of Civil Service Unions case (below) at 4408, saying that the decision must affect some other person either- (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

This analysis is 'classical but certainly not exhaustive' : R. Secretary of State for the Environment ex. p. Nottinghamshire C.C. (1986) AC 240 at 249 (Lord Scarman). One case which does not seem to be covered is that of a first time applicant for a licence (below, p. 559). The Courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation."

82. In a recent case, in dealing with legitimate expectation in R. v. Minister of Agriculture, Fisheries and Food, ex parte Jaderow Ltd., 1991 All England Law Reports 41. It has been observed at page 68:-

"Question II: Legitimate Expectation: It should be pointed out in this regard that, under the powers reserved to the member states by Art. 5(2) of Regulation 170/83, fishing activities could be made subject to the grant of licences which, by their nature, are subject to temporal limits and to various conditions. Furthermore, the introduction of the quota system was only one event amongst others in the evolution of the fishing industry, which is characterised by instability and continuous changes in the situation due to a series of events such as the extensions, in 1976, of fishing areas to 200 miles from certain coasts of the Community, the necessity to adopt measures for the conservation of fishing resources, which was dealt with at the international by the introduction of total allowable catches, the arguments about the distribution amongst the members states of the total allowable catches available to the Community, which were finally distributed on the basis of a reference period which ran from 1973 to 1978 but which is reconsidered every year.

In those circumstances, operators in the fishing industry were not justified in taking the view that the Community rule precluded the making of any changes to the conditions laid down by national legislation or practice for the grant of licences to fish against national quotas or the adoption of new conditions compatible with Community Law.

> Consequently, the answer to this question must be that Community Law as it now stands does not preclude legislation or a practice of a member state whereby a new condition not previously stipulated is laid down for the grant of licences to fish against national quotas."

Thus, it will be clear even legitimate expectation cannot preclude legislation.

83. Where the right to continue in office has been put an end to by statute, even then it mav oe complained that the other rights like salary and perks would continue to be reserved and they could be claimed. To avoid that contention, Section 3(2) provides for compensation equivalent to the amount of salary and allowances for the unexpired term of office.

84. Even assuming that the reasoning of the High Court is correct, in that, by the term or avvointment he should have a right to continue after attaining the age of 65, when we look at the notification dated 19-6-89, that gives the first respondentla right to continue beyond the age of 65.

85. Then the question will be whether it is a single person's legislation. The argument and the counter arguments proceed thus. Mr. Shanti Bhusan would urge that it happened at the time of enactment only the first respondent had attained the age of 65 years and, therefore, it could not be called a single man's legislation since it affects everyone. On the contrary, the argument of Kapil Sibal is that only the first respondent alone could be affected and, therefore, it is a single person's legislation being violative of Article 14 of the Constitution. We will look at the relevant case law which deals with single person's legislation and how far they are violative of Article 14. In Chiranjit Lal Chowdhury v. Union of India, 1950 SCR 869: (AIR 1951 SC 41), the headnote reads:

> Held also per Kania, C.J., Fazl Ali, and Mukherjee, JJ.- (Patanjali Sastri and Das, JJ. dissenting)- that though the Legislature had proceeded against one company only and its shareholders inasmuch as even one corporation or a group of persons can be taken to be a class by itself for the purposes of legislation, provided there is sufficient basis or reason for it and there is a strong presumption in favour of the constitutionality of an enactment, the burden was on the petitioner to prove that there were also other companies similarly situated and this company alone had been discriminated against, and as he had failed to discharge this burden the impugned Act cannot be held to have denied to the petitioner the right to equal protection of the laws referred to in Art. 14 and the petitioner was not therefore entitled to any relief under Art. 32."

In Ram Krishna Dalmia v. Justice S. R. Tendolkar, 1959 SCR 279 pp. 295-299: (AIR 1958 SC 538 at pp. 547-48), it has been held thus:-

> "..... It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be 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 must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established

by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure". The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Courtfurther established

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles"

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of he existing conditions on the part of a legislature are to, be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it iscalled upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.

A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Art. 14 of the Constitution, may be placed in one or other of the following five classes :-

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise or such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things. grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to

be achieved by the statute, no matter whether the provisions of the statute are intended to apply to a particular person or thing or only to a certain class of persons or things. here the court finds that the classification satisfies the tests, the court will uphold the validity of the law, as it did in Chiranjitlal Chowdhry v. Union of India (AIR 1951 SC 41), State of Bombay v. F. N. Balsara (AIR 1951 SC 318), Kedar Nath Bajoria v. State of West Bengal (AIR 1953 SC 404), V. M. Syed Mohammed & Company v. State of Andhra (AIR 1954 SC 314) and Bhudhan Choudhry v. State of Bihar, (AIR 1955 SC 191).

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination, as it did in Ameerunnissa Begum v. Mahboob Begum (AIR 1953 SC 91) and Ramprasad Narain Sahi v. State of Bihar, (AIR 1953 SC 215)."

86. From the proposition it is clear that there could a legislation relating to a single person. Assuming for a moment, that the Section 3 applies only to the first respondent even then, where it is avowed policy of the State to introduce an age of superannuation of 65 years of age, there is nothing wrong with the same.

87. In Lachhman Das on behalf of Firm Tilak Ram Ram Bux v. State of Punjab, (1963) 2 SCR 353 at p. (375) : (AIR 1963 SC 222 at p. 232), it is held as thus :-

".. ..... Professor Willis says in his constitutional law p. 580 "a law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it". This statement of law was approved by this Court in Chiranjit Lal Chowdhry V. Union of India (AIR 1951 SC 41)."

Therefore, on this principle Patiala State Bank was held to be a class by itself and it would be within the power of the State to enact a law with respect to it.

88. In Tilkayat Shri Govindlalaji Maharaj v. State of Rajasthan, (1964) 1 SCR 561 at pp. 617-18: (AIR 1963 SC 1638 at p. 1659), it is neld as thus

"That takes us to the argument that the Act is invalid because it contravenes Art. 14. In our opinion, there is no substance in this argument. We have referred to the historical background of the present legislation. At the time when Ordinance No. 11 of 1959 was issued, it had come to the knowledge of the Government of Raj asthan that valuables such as jewelleries, ornaments, gold and silverware and cash had been removed by the Tilkayat in the month of December 1957, and as the successor of the State of Mewar, the State of Rajasthan had to exercise its right of supervising the due administration of the properties of the temple. There is no doubt that the shrine at Nathdwara holds a unique position amongst the Hindu shrines in the State of Rajasthan and no temple can be regarded as comparable with it. Besides, the Tilkayat himself had entered into negotiations for the purpose of obtaining a proper scheme for the administration of the temple properties and for that purpose, a suit under S. 92 of the Code had. in fact been filed. A Commission of Enquiry had to be appointed to

> investigate into the removal of the valuables. If the temple is a public temple and the legislature thought that it was essential to safeguard the interests of the temple by taking adequate legislative action in that behalf, it is difficult to appreciate how the Tilkayat can seriously contend that in passing the Act, the legislature has been guilty of unconstitutional discrimination. As has been held by this Court in the case of Ram Krishna Dalmia v. Justice S. R. Tendolkar, (AIR 1958 SC 538), that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. Therefore, the plea raised under Art. 14 fails".

In Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna v. State of Bihar, (1988) 3 SCR 311 at p. 312 : (AIR 1988 SC 1136 at p. 1141), it is held thus:-

> "All the institutions which answered the description given in Section 2(a) of the Act were to be nationalised. It was not correct to say that the Institute had been singled out for nationalisation." at p. 321 (of SCR) : (at pp. 1139-40 of AIR), it is held thus:-
>
> "The nationalisation has been resolved to be made in phases. It has been already noticed that under Section 3(1) of the Act, the Institution mentioned in the Schedule will be transferred to the State Government and will be actually vested in it free from all circumstances. The Schedule mentions only one Institute and in view of Section 3(1) it has vested in the State Government. It is said that the first phase relates to the taking over of the Institute and that has been done. Section 3(2) also provides for amendment of the Schedule by including any institution. In other words, the other institutions which answer the description of private educational institutions as defined in clause (a) of Section 2 of the Act will also be nationalised not at a time, but in phases, the first phase having started with the take ever of the institute. This, in short, is the scheme of the Act." at p. 322 (of SCR) (at p. 1141 of AIR), it is held as under:-"

The contention made on behalf of the petitioner-Society is wholly misconceived. The Ordinances were not promulgated and the Act was not passed for the purpose of nationalisation of the Institute only. It is apparent from the provisions of the Ordinances and the Act that the private educational institutions as defined therein are to be taken over for the purpose as mentioned in the preambles to the Ordinances and the Act in a phased manner. All the institutions which answer the description as given in Section 2(a) of the Act are to be nationalised. It is, therefore, not correct to say that the Institute has been singled out for the purpose of nationalisation.

There can be no doubt that when nationalisation has to be done in a phased manner all the institutions cannot be taken over at a time. The nationalisation in a phased manner contemplates that by and by the object of nationalisation will be taken over. Therefore, in implementing the nationalisation of private institutions in phased manner, the Legislature has started with the Institute. Therefore, the question of singling out the Institute or treating it as a class by itself does not arise, for as the provisions of the Act and the Ordinances go, all the private educational institutions, as defined in Section 2(a) of the Act will be nationalised in a phased manner". at pp. 325-26 (of SCR) : (at pp. 1142-43 of AIR), it is held thus:-

> "It is submitted that this fact demonstrates that the professed object of nationalisation

> in phases is a mere pretence and a colourable device to single out the Institute for discriminatory treatment. The taking over of the Institute is an act of legislation and not an act of the Government. The question to be considered is whether at the time when the Ordinances were promulgated or the Act was passed, the same suffered the vice of discrimination or not. There can be no doubt that on the date- the Ordinances were promulgated and the Act was passed, the same could not be challenged on the ground of non-implementation of the legislative intent in nationalising similar institutes by amending the Schedule. If a legislative enactment cannot be challenged as discriminatory on the date it is passed, it is difficult to challenge the same as violative of Article 14 of the Constitution on the ground of inaction of the executive in implementing the purposes of the Act, regard being had to the fact that it was the legislature which had made the selection for the first phase of nationalisation. If no such selection had been made by the Legislature and the entire thing had been left to the discretion of the Government, it might have been possible to contend of discriminatory treatment. The respondents have, however, given an explanation for not including the other similar institutions in the programme of nationalisation, to be precise, in the Schedule to the Act".

89. While we are on this case, we have got to deal with the arguments of Mr. Kapil Sibal, who bases his submission on the extract from the pages 325-326 that the relevant date to determine arbitrariness is the date of enactment. On the date if the first respondent alone is affected it would be arbitrary and violative of Article 14, so proceeds the argument.

90. We are unable to agree with this argument. No doubt, in this case Lalit Narayan Mishra Institute alone was taken over by the Legislature. That was the only institution affected thereby. In spite of this the Court held this enactment is not violative of Article 14, since the institution of like nature would fall within the ambit of the statute, notwithstanding the fact that only one institute has been specified in the schedule. The attempt of the learned counsel for the first respondent that all these cases legislative intervention became necessary because there were some other reasons namely, mismanagement requiring taking over the banks and temples etc. and therefore, the single persons legislation was upheld is not tenable. We also hold that in order to justify a legislation of this character, no extraordinary situation need be disclosed. The contention that this is not in furtherance of the legislative object, cannot also be accepted because it has already been seen that the legislative object is to' introduce an age of superannuation. Beyond this nothing more need be established by the State. The possibility of this legislation applying to one or more persons exists in principle. The fact that only one individual came to be affected cannot render the legislation arbitrary as violative of Article 14. This is because Section 3 is general in terms and the incidents of its applying to one individual does not render the legislation invalid.

91. The theory advanced by the learned counsel for the first respondent that there must be mismanagement or some extraordinary situation to warrant a legislation of its character also does not seem to be correct as seen from the Atlas Cycle Industries Ltd., Sonepat v. Their Workmen, 1962 Suppl (3) SCR 89 at pp. 103-4: (AIR 1962 SC 1 100 at pp. 1105-06), it is held thus:-

> "Lastly, it is contended that the transfer of the proceedings pending before the old Tribunal to the new Tribunal under the Notification dated October 31, 1957, was invalid and inoperative. Two grounds were urged in support of this contention. One is that Shri A. N. Gujral attained the age of sixty-five on June 4, 1957, and his term of office would have then expired under S. 7C. Then the Punjab Legislature enacted

> Act 8 of 1957 raising the age of retirement under S. 7C(b) from sixty-five to sixty-seven. That was with a view to continue Shri A. N. Gujral in office. And this legislation came into force only on June 3, 1957. This Act, it is said offends Art. 14 as its object was to benefit a particular individual, Shri A. N. Gujral, and reference was made to a decision of this Court in Ameerunnissa.v. Mehboob (AIR 1953 SC 9 1) as supporting this contention. There is no force in this contention. There the legislation related to the estate of one Nawab Waliudduoula, and it provided that the claims of Mahboob Begum and Kadiran Begum, who claimed as heirs stood dismissed thereby and could not be called in question in any court of law. And this Court held that it was repugnant to Art. 14, as it singled out individuals and denied them the right which other citizens have of resort to a court of law. But the impugned Act, 8 of 1957 is of general application, the age being raised to sixty -seven with reference to all persons holding the office under that section. The occasion which inspired the enactment of the statute might be the impending retirement of Shri A. N. Gujral. But that is not a ground for holding that it is discriminatory and contravenes Art. 14, when it is, on its terms, of general application."

92. The attempt to distinguish this case that it was one wherein a benefit of extension was conferred and that a number of industrial adjudications were pending cannot be accepted.

93. However, strong relevance (reliance) is placed on D. S. Reddy v. Chancellor, Osmania University, (1967) 2 SCR 214 at p. 223 : (AIR 1967 SC 1305 at p. 1310). The facts of this case require to be noted they can be culled from the head note as under:-

> "As a result of the Osmania University (Amendment) Act II of 1966, S. 12(1) of the Osmania University Act, 1959, was amended to provide for the appointment of the ViceChancellor by the Chancellor alone; in S. 12(2) a provision was introduced whereby he could only be removed from office by an order of the Chancellor passed on the ground of misbehaviour or incapacity after enquiry by a person who was or had been a Judge of a High Court or the Supreme Court and after the Vice-Chancellor had been given an opportunity of making his representation against such removal Section 13(1) of the 1959 Act was also amended so as to reduce the term of office of the Vice-Chancellor from 5 to 3 years.

The 1959 Act was again amended later in 1966 by the Osmania University (Second Amendment) Act XI of 1966. Section 5 of this amending Act introduced a new S. 13A into the 1959 Act whereby it was provided that the person then holding the office of ViceChancellor was appointed; and that such new appointment must be made within 90 days of the commencement of the Act whereupon the old Vice-Chancellor would cease to hold office.

The appellant filed a writ petition claiming, inter alia, that of S. 5 of the second amending Act introducing the new S. 13A was dis- criminatory as against him and therefore violative of Art. 14. The High Court dismissed the petition.

In the appeal to the Supreme Court, it was contended on behalf of the respondents that as the term of office had been reduced to 3 years by the first amending Act, the legislature, in order to give effect to this provision and to enable fresh appointments to be made under the Act, had enacted S. 13A which had, necessarily, to apply to a person like the appellant who was in office at the time when the provisions came into force. Such provisions could not, in the nature of things, apply to

Vice-Chancellors who were to be appointed in future, the appellant was appointed from a panel submitted by a committee constituted under the unamended S. 12(2) whereas future Vice-Chancellors were to be appointed by the Chancellor alone; furthermore, the appellant had been the ViceChancellor for 7 years. Having regard to these circumstances the legislature had chosen to treat the appellant as a class by himself and had differentiated him from persons to be appointed Vice-Chancellors in the future; that such classification was reasonable and had a rational relation to the object sought to be achieved by the second amending Act i.e. bringing about uniformity in the tenure of 3 years of office for all Vice-Chancellors; that the appellant was not entitled to the benefit of S. 12(2) and the legislature was competent to enact S. 13A so as to give effect to the amended provisions as early as possible." at pp. 229230 (of SCR) : (at pp. 1313-14 of AIR), it is held:-

> "We have already stated that the appellant was appointed under the Act, for a further term of 5 years, as Vice-Chancellor, on April 30, 1964, and he was continuing in office, as such, at the time when the two Amending Acts were passed; and, normally, he would be entitled to continue in that post for the full term, which will expire only at the end of April, 1969. The First Amendment Act provided, in S. 12 of the, Act, that the Vice-Chancellor is to be appointed by the Chancellor; but S. 12(2) specifically provided that the Vice-Chancellor shall not be removed from his office except by an order of the Chancellor passed on the ground of misbehaviour or incapacity and, after due inquiry by such person who is, or has been, a Judge of a High Court or the Supreme Court, as may be appointed by the Chancellor. It was also provided that the Vice-Chancellor was to have an.opportunity of making his representation against such removal. Prima facie, the provisions contained in sub-s. (2) of S. 12 must also apply to the appellant, who did continue in office even after the passing of the First Amendment Act. No doubt the term of office of the Vice-Chancellor was fixed at 3 years under S. 13(1) of the Act. But no provisions were made in the First Amendment Act regarding the termination of the tenure of office of the Vice-Chancellor who was then holding that post.

There can be no controversy that S. 13A introduced by S. 5 of the Second Amendment Act, deals only with the appellant. In fact, the stand taken on behalf of the respondents in the counter affidavit filed before the High Court, was to the effect that the Legislature had chosen to treat the Vice-Chancellor holding office at the time of the commencement of the Second Amendment Act. as a class by himself and with a view to enable the Chancellor to make fresh appointments, S. 13A of the Act was enacted.

Therefore, it is clear that S. 13A applies only to the appellant. Though no doubt, it has been stated, on behalf of the respondent, that similar provisions were incorporated, at about the same time, in two other Acts, relating to two other Universities viz., the Andhra University and the Sri Venkateswara University, and though this circumstance has also been taken into account by the learned Judges of the High Court, in our opinion, those provisions have no bearing in considering the attack levelled by the appellant on S.13A of the Act.

This is a clear case where the statute itself directs its provisions by enacting S. 13A, against one individual, viz. the appellant; and before it can be sustained as valid, this Court must be satisfied that there is a reasonable basis for grouping the appellant as a class by himself and that such reasonable basis must appear either in the statute itself or must be deducible from other surrounding circumstances. According to learned counsel for the appellant, all Vice-Chancellors of the Osmania University come under one group and can be classified only as one unit and there is absolutely no

justification for grouping the appellant under one class and the Vice-Chancellors to be appointed in future under separate class. In any event, it is also urged that the said classification has no relation or nexus to the object of the enactment." at pp. 230-231 (of SCR): (at p. 1314 of AIR), it is observed as under:-

> "We are inclined to accept the contention of Mr. Setalvad, that there is no justification for the impugned legislation resulting in a classification of the Vice-Chancellors into two categories, viz. the appellant as the then existing Vice-Chancellor and the future Vice-Chancellors to be appointed under the Act.

In our view, the Vice-Chancellor, Who is a ointed under the Act, or the Vice-Chancellor who was holding that post on the date of the commencement of the Second Amendment Act, from one single group or class. Even assuming that the classification of tnese two types of persons as coming under two different groups can be made nevertheless,. it is essential that such a classification must be founded on an intelligible differentia which distinguishes the appellant from the Vice-Chancellor appointed under the Act. We are not able to find any such intelligible differentia on the basis of which the classification can be justified.

While a Vice-Chancellor appointed under S. 12 of the Act can be removed from office only by adopting the procedure under S. 12(2), the services of the appellant, who was also a Vice-Chancellor and similarly situated, is sought to be terminated by enacting S. 13A of the Act. We do not see any policy underlying the Act justifying this differential treatment accorded to the appellant. The term of office of the Vice-Chancellors has been no doubt reduced under the First Amendment Act and fixed for 3 years for all the Vice-Chancellors. But, so far as the appellant is concerned, by virtue of S. 13A of the Act, he can continue to hold that office only until a new Vice-Chancellor is appointed by the Chancellor, and that appointment is to be made within 90 days. While all other ViceChancellors, appointed under the Act, can continue to be in office for a period of three years, the appellant is literally forced out of his office on the expiry of 90 days from the date of commencement of the Second Amendment Act. There is also no provision in the statute providing for the termination of the services of the Vice-Chancellors, who are appointed under the Act, in the manner provided under S. 13A of the Act. By S. 13A, the appellant is even denied the benefits which may be available under the proviso to sub-s. (1) of S. 13 of the Act, which benefit is available to all other Vice-Chancellors.

94. It will be clear from the above extract on its own terms the legislation applied,only to one individual and nobody else, even in principle, to a future Vice-Chancellor. There was no basis for making a distinction between the then existing Vice-Chancellor and the future Vice-Chancellors, who are to be treated differently. Further, the existing Vice-Chancellor was subject to a disability for which there was no rational basis.

95. As a matter of fact, this ruling had come up for discussion in Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna v . State of Bihar (1988) 3 SCR 311 at p. 322 :'(AIR 1988 SC 1136 at pp. 1140-41) it is ruled:-

> "The other decision that has been relied upon by the petitioner is B. S. Reddy v. Chancellor Osmania University (1 967) 2 SCR 214: (AIR 1967 SC 1305). What happened in that case was that Section 5 of the Osmania University (Second Amendment) Act, 1966 introduced into the Osmania University Act, 1959 a new Section 13A whereby it was provided that the person then holding the office of the

> Vice-Chancellor of the University could only hold that office until a new Vice-Chancellor was appointed, and that such new amendment must be made within 90 days of the commencement of the said amendment Act whereupon the old Vice-Chancellor would cease to hold office. It was held by this Court that there was no justification for the Impugned legislation, that is, the provision of Section 13A, resulting in a classification of the Vice-Chancellors into two categories, namely, the appellant as the existing Vice-Chancellor and the future Vice-Chancellors to be appointed under the Osmania University Act. It was held that both these categories constituted one single group or class, and that even assuming that the classification of these two types of persons as coming under two different groups could be made, nevertheless, it was essential that such a lassification must be founded on an intelligible differentia which would distinguish the appellant from the Vice-Chancellors appointed under the Osmania University Act. The Court held that there was no intelligible differentia on the basis of which the classification could be justified.

The situation in the case in hand is entirely different.

96. Ameerunnissa Begum v. Mahboob Begum, 1953 SCR 404 : (AIR 1953 SC 9 1) Ameerunnissa's case is clearly distinguishable. The reason is the impugned enactment excluded a particular set of persons viz., heirs of Nawab. They were even denied access to Court to ventilate their grievances. Secondly, it was a named legislation. Though for apparent purposes it deals with specifically the wife's claims of succession. Lastly, we will deal with Ram Prasad Narayan Sahi v. State of Bihar, 1953 SCR 1129 at pp. 1132-33 : (AIR 1953 SC 215 at p. 217), it is held as under:-

> "The decision of the majority of this Court in,Chiranjit Lal v. Union of India (AIR 1951 41) is relied on in support of these contentions. In that case, however, the majoity fell justified in upholding the legislation,enough it adversely affected the rights and interest of the shareholders of a particular joint stock company, because the mismanagement of the company's affairs prejudicially affected the production of an essential commodity and caused serious unemployment amongst a section of the community. Mr. Justice Das and I took the view that legislation directed against a particular named person or corporation was obviously discriminatory and could not constitutionally be justified even if such legislation resulted in some benefit to the public. In a system of government by political parties, I was apprehensive of the danger inherent in special enactments which deprive particular named persons of their liberty or property because the Legislature thinks them guilty of misconduct, and said in my dissenting opinion:
>
> "Legislation based upon mismanagement or other misconduct as the differentia and made applicable to a s ecified individual or corporate body is not far removed from the notorious parliamentary procedure formerly employed in Britain of punishing individual delinquents by passing bills of attainder, and should not, I think receive judicial encouragements:

97. It has to be carefully noted that this Act was intended to deny the appellant a right to decision by a court of law and that too in a private dispute between the parties. Hence. this ruling again has no application to the facts of the case. As we observed in the beginning of the judgment, if the State is well entitled to introduce an age of super annuation we have referred to (1985) 2 SCR 579 : (AIR

1985 SC 551) Nagaraja's case, how could that be called discrimination or unreasonable? The resultant conclusion is the amending Act, particularly, Section 3 is not. in any way, arbitrary and, therefore, not violative of Article 14.

Whether the failure to implead Chauhan would be fatal to the Writ Petition?

98. The contention of Mr. Shanti Bhusan that the failure to implead Chauhan will be fatal to the writ petition does not seem to be correct. He relies on AIR 1978 Ker 176 (FB). That case related to admission to medical college whereby invalidating the selection vitally affected those who had been selected already. Equally, the case Padmraj Samrendra v. State of Bihar, AIR 1979 Patna 266 (FB) has no application. This was a case where the plea was founded in Article 14 and arbitrary selection. The selectees were vitally - affected. The plea that the decision of the court in the absence of Chauhan would be violative of principle of natural justice as any adverse decision would affect him is not correct.

99. On the contrary, we think we should approach the matter from this point of view viz., to render an effective decision whether the presence of Chauhan is necessary? We will in this connection refer to A. Janardhana v. Union of India, (1983) 3 SCC 601: (AIR 1983 SC 769) at para 36 it is held as under:-

> "....Approaching the matter from this angle, it may be noticed that 'relief is sought only against the Union of India and the concerned Ministry is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground".

100. What was the first respondent seeking in the writ petition? He was questioning the validity of the Ordinance and the Act whereby he had been deprived of his further continuance. What is the relief could he have asked for against Chauhan? None. The first point is Chauhan came to be appointed consequent to the suspension of the first respondent which suspension had come to be stayed by the High Court on 12-6-90. Then, again, as pointed out by the High Court it was "till further orders". Therefore, we hold the failure to implead Chauhan does not affect the maintainability of the writ petition.

101. One postscriptum needs to be added. It was argued on the basis of Pritam Singh v. The State (1950) 1 SCR 453: (AIR 1950 SC 169) that unless the court comes to the conclusion that the High Court is palpably wrong, it should not interfere. No doubt, the same principle is stated in Union of India v. M. P. Singh 1990 (Suppl) SCC 701 : (AIR 1990 SC 1098) that if substantial justice is done the interference under Article 136 is not warranted. We do not think this principle will have any application.

102. There is no denying the fact that the first respondent had

> "battled with great grief and fears and borne the conflict of dream shattering years".
>
> But the state says that this in a case of "much of a muchness" in words of Sir John Vanbrugh (in "The provok'd Husband").

103. How do we balance these claims except to examine the matter in the light of the law and quote Horace: "tempus abire tibiest"(" time you were off").

104. In the light of above discussion, it follows that the appellant is entitled to succeed. We hold that on 13-7-90 the first respondent's right to office as Chairman/Member of Himachal Pradesh Electricity Board came to end. The impugned judgement of High Court in C.W.P. No. 396 of 1990 dated 12th July, 1991 is hereby set aside. The appeal will stand allowed.

105. However, as repeatedly stated by Mr. Shanti Bushan during the course of the arguments that the state is willing to provide compensation for the remaining period of the tenure, we direct the State to pay the first respondent the salary, allowances and perk for the period commencing from 13-7-90 up to 25-7-92, had he continued in office but for the impugned legislation . If any payment has been made by interim order of the court that will go towards the deduction of this liability.

106. In view of the peculiar facts and circumtances of the case, there will be no order as to costs.

Appeal Allowed.

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