Shri Ram Krishna Dalmia

Vs

Shri Justice S. R. Tendolkar & Others (And Connected Appeal)

Civil Appeals Nos. 455 to 457 and 656 to 658 of 1957

(T. L. Venkatarama Ayyar, B. P. Sinha, S. K. Das, PA. K. Sarkar JJ)

28-03-1958.

JUDGMENT

DAS C.J. -

These six several appeals are directed against a common judgment and order pronounced on April 29, 1957, by a Division Bench of the Bombay High Court in three several Miscellaneous Applications under Art. 226 of the Constitution, namely, No. 48 of 1957 filed by Shri Ram Krishna Dalmia (the appellant in Civil Appeal No. 455 of 1957), No. 49 of 1957 by Shri Shriyans Prasad Jain and Shri Sital Prasad Jain (the appellants in Civil Appeal No. 456 of 1957) and No. 50 of 1957 by Shri Jai Dayal Dalmia and Shri Shanti Prasad Jain (the appellants in Civil Appeal No. 457 of 1957). By those Miscellaneous Applications the petitioners therein prayed for an appropriate direction or order under Art. 226 for quashing and setting aside notification No. S.R.O. 2993 dated December 11, 1956, issued by the Union of India in exercise of powers conferred on it by section 3 of the Commissions of Enquiry Act (LX of 1952) and for other reliefs. Rules were issued and the Union of India appeared and showed cause. By the aforesaid judgment and order the High Court discharged the rules and dismissed the applications and ordered that the said notification was legal and valid except as to the last part of cl. (10) thereof from the words "and the action" to the words "in future cases" and directed the Commission not to proceed with the inquiry to the extent that it related to the aforesaid last part of cl. (10) of the said notification. The Union of India has filed three several appeals, namely, Nos. 656, 657 and 658 of 1957, in the said three Miscellaneous Applications complaining against that part of the said judgment and order of the Bombay High Court which adjudged the last part of cl. (10) to be invalid.

The Commissions of Inquiry Act, 1952 (hereinafter referred to as the Act), received the assent of the President on August 14, 1952, and was thereafter brought into force by a notification issued by the Central Government under section 1(3) of the Act. As its long title states, the Act is one "to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers". Sub-section (1) of section 3, omitting the proviso not material for our present purpose, provides :

> "The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within which time as may be specified in the notification, and the Commission so appointed shall make the Inquiry and perform the functions accordingly."

Under sub-section (2) of that section the Commission may consist of one or more members and where the Commission consists of more than one member one of them may be appointed as the Chairman thereof. Section 4 vests in the Commission the powers of a civil court while trying a suit under the Code of Civil Procedure in respect of the several matters specified therein, namely, summoning and enforcing attendance of any person and examining him on oath, requiring discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court or officer, issuing commissions for examination of witnesses or documents and any other matter which may be prescribed. Section 5 empowers the appropriate Government, by a notification in the Official Gazette, to confer on the Commission additional powers as provided in all or any of the sub-sections (2), (3), (4) and (5) of that section. Section 6 provides that no statement made by a person in the course of giving evidence before the commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement provided that the statement is made in reply to a question which he is required by the Commission to answer or is relevant to the subject matter of the inquiry. The appropriate Government may under section 7 issue a notification declaring that the Commission shall cease to exist from such date as may be specified therein. By section 8 the Commission is empowered, subject to any rules that may be made, to regulate its own procedure including the time and place of its sittings and may act notwithstanding the temporary absence of any member or the existence of any vacancy among its members. Section 9 provides for indemnity to the appropriate Government, the members of the Commission or other persons acting under their directions in respect of anything which is done or intended to be done in good faith in pursuance of the Act. The rest of the sections are not material for the purpose of these appeals.

In exercise of the powers conferred on it by section 3 of the Act the Central Government published in the Gazette of India dated December 11, 1956, a notification in the following terms :

MINISTRY OF FINANCE

(Department of Economic Affairs)

ORDER

New Delhi, the 11th December, 1956

S.R.O. 2993 - Whereas it has been made to appear to the Central Government that :

> (1) a large number of companies and some firms were promoted and/or controlled by Sarvashri Ramkrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Shriyans Prasad Jain, Shital Prasad Jain or some one or more of them and by others being either relatives or employees of the said person or persons, closely connected with the said persons;
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> (2) large amounts were subscribed by the investing public in the shares of some of these companies;
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> (3) there have been gross irregularities (which may in several respects and materials amount to illegalities) in the management of such companies including manipulation of the accounts and unjustified transfers and use of funds and assets;
>
> (4) the moneys subscribed by the investing public were in a considerable measure

used not in the interests of the companies concerned but contrary to their interest and for the ultimate personal benefit of those in control and/or management; and

(5) the investing public have as a result suffered considerable losses.

And Whereas the Central Government is of the opinion that there should be a full inquiry into these matters which are of definite public importance both by reason of the grave consequences which appear to have ensued to the investing public and also to determine such measures as may be deemed necessary in order to prevent a recurrence thereof;

Now, therefore, in exercise of the powers conferred by section 3 of the Commissions of Inquiry Act (No. 60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of the following persons, namely :

Shri Justice S. R. Tendolkar, Judge of the High Court at Bombay, Chairman.

Shri N. R. Modi of Messrs A. F. Ferguson & Co., Chartered Accountants, Member.

Shri S. C. Chaudhuri, Commissioner of Income-tax, Member.

1. The Commission shall inquire into and report on an in respect of :

(1) The administration of the affairs of the companies specified in the schedule hereto;

(2) The administration of the affairs of such other companies and firms as the Commission may during the course of its enquiry find to be companies or firms connected with the companies referred to in the schedule and whose affairs ought to be investigated and inquired into in connection with or arising out of the inquiry into the affairs of the companies specified in the schedule hereto;

(3) The nature and extent of the control, direct and indirect, exercised over such companies and firms or any of them by the aforesaid Sarvashri Ram Krishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, their relatives, employees and persons connected with them;

(4) The total amount of the subscription obtained from the investing public and the amount subscribed by the aforesaid persons and the extent to which the funds and assets thus obtained or acquired were misused, misapplied or misappropriated;

(5) The extent and nature of the investments by and/or loans to and/or the use of the funds or assets by and transfer of funds between the companies aforesaid;

(6) The consequences or results of such investments, loans transfers and/or use of funds and assets;

(7) The reasons or motives of such investments, loans transfers and use and whether there was any justification for the same and whether the same were made bona fide in the interests of the companies concerned;

(8) The extent of the losses suffered by the investing public, how far the losses were avoidable and what steps were taken by those in control and/or management to avoid the losses;

(9) The nature and extent, of the personal gains made by any person or persons or any group or groups of persons whether herein named or not by reason of or through his or their connection with or control over any such company or companies;

(10) Any irregularities, frauds or breaches of trust or action in disregard of honest commercial practices or contravention of any law (except contraventions in respect of which criminal proceedings are pending in a Court of Law) in respect of the companies and firms whose affairs are investigated by the Commission which may come to the knowledge of the Commission and the action which in the opinion of the Commission should be taken as and by way of securing redress or punishment or to act as a preventive in future cases.

(11) The measures which in the opinion of the Commission are necessary in order to ensure in the future the due and proper administration of the funds and assets of companies and firms in the interests of the investing public.

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SCHEDULE

1. Dalmia Jain Airways Ltd.

2. Dalmia Jain Aviation Ltd., (now known as Asia Udyog Ltd.)

3. Lahore Electric Supply Company Ltd., (now known as South Asia

Industries Ltd.)

4. Sir Shapurji Broacha Mills Ltd.

5. Madhowji Dharamasi Manufacturing Company Ltd.

6. Allen Berry and Co. Ltd.

7. Bharat Union Agencies Ltd.

8. Dalmia Cement and Paper Marketing Company Ltd., (now known as

Delhi Glass Works Ltd.)

9. Vastra Vyavasaya Ltd.

Ordered that the Order be published in the Gazette of India

for public information. (No. F. 107 (18 - INS/56)).

H. M. Patel

Secretary.

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It should be noted that the above notification did not specify the time within which the Commission was to complete the inquiry and make its report.

On January 9, 1957, the Central Government issued another notification providing that all the provisions of sub-sections (2), (3) (4), and (5) of section 5 should apply to the Commission. As the notification of December 11, 1956, did not specify the time within which the Commission was to make its report, the Central Government on February 11, 1957, issued a third notification specifying two years from that date as the time within which the Commission of Inquiry should exercise the functions conferred on it and make its report. On February 12, 1957, three several Miscellaneous Applications were filed under art. 226 of the Constitution questioning the validity of the Act and the notification dated December 11, 1956, on diverse grounds and praying for a writ or order for quashing the same.

It will be convenient to advert to a few minor objections urged before us on behalf of the petitioners in support of their appeals before we come to deal with their principal and major contentions. The first objection is that the notification has gone beyond the Act. It is pointed out that the Act, by section 3, empowers the appropriate Government in certain eventualities to appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and for no other purpose. The contention is that the conduct of an individual person or company cannot possibly be a matter of public importance and far less a definite matter of that kind. We are unable to accept this argument as correct. Widespread floods, famine and pestilence may quite easily be a definite matter of public importance urgently calling for an inquiry so as to enable the Government to take appropriate steps to prevent their recurrence in future. The conduct of villagers in cutting the bunds for taking water to their fields during the dry season may cause floods during the rainy season and we can see no reason why such unsocial conduct of villagers of certain villages thus causing floods should not be regarded as a definite matter of public importance. The failure of a big bank resulting in the loss of the life savings of a multitude of men of moderate means is certainly a definite matter of public importance but the conduct of the persons in charge and management of such a bank which brought about its collapse is equally a definite matter of public importance. Widespread dacoities in particular parts of the country is, no doubt, a definite matter of public importance but we see no reason why the conduct, activities and modus operandi of particular dacoits and thugs notorious for their cruel depredations should not be regarded as definite matters of public importance urgently requiring a sifting inquiry. It is needless to multiply instances. In each case the question is : is there a definite matter of public importance which calls for an inquiry ? We see no warrant for the proposition that a definite matter of public importance must necessarily mean only some matter involving the public benefit or advantage in the abstract, e.g., public health, sanitation or the like or some public evil or prejudice, e.g., floods, famine or pestilence or the like. Quite conceivably the conduct of an individual person or company or a group of individual persons or companies may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry. Besides, section 3 itself authorises the appropriate Government to appoint a commission of Inquiry not only for the purpose of making an inquiry into a definite matter of public importance but also for the purpose of performing such functions as may be specified in the notification. Therefore, the notification is well within the powers conferred on the appropriate Government by section 3 of the Act and it cannot be questioned on the ground of its

going beyond the provisions of the Act.

Learned counsel for the petitioners immediately replies that in the event of its being held that the notification is within the terms of the Act, the Act itself is ultra vires the Constitution. The validity of the Act is called in question in two ways. In the first place it is said that it was beyond the legislative competency of Parliament to enact a law conferring such a wide sweep of powers. It is pointed out that Parliament enacted the Act in exercise of the legislative powers conferred on it by Art. 246 of the Constitution read with entry 94 in List I and entry 45 in List III of, the Seventh Schedule to the Constitution. The matters enumerated in entry 94 in List I, omitting the words not necessary for our purpose, are "inquiries... for the purpose of any of the matters in this List", and those enumerated in entry 45 in List III, again omitting the unnecessary words, are "inquiries... for the purposes of any of the matters specified in List II of List III." Confining himself to the entries in so far as they relate to "inquiries", learned counsel for the petitioners urges that Parliament may make a law with respect to inquiries but cannot under these entries make a law conferring any power to perform any function other than the power to hold an inquiry. He concedes that, according to the well recognised rule of construction of the provisions of a Constitution, the legislative heads should be construed very liberally and that it must be assumed that the Constitution intended to give to the appropriate legislature not only the power to legislate with respect to the particular legislative topic but also with respect to all matters ancillary thereto. Indeed the very use of the words "with respect to" in Art. 246 supports this principle of liberal interpretation. He, however, points out that the law, which the appropriate legislature is empowered to make under these entries must be with respect to inquiries for the purposes of any of the matters in the relevant lists and it is urged that the words "for the purpose of" make it abundantly clear that the law with respect to inquiries to be made under these two entries must be for the purpose of future legislation with respect to any of the legislative heads in the relevant lists. In other words, the argument is that under these two entries the appropriate legislature may make a law authorising the constitution of a Board or Commission of Inquiry to inquire into and ascertain facts so as to enable such legislature to undertake legislation with respect to any of the legislative topics in the relevant lists to secure some public benefit or advantage or to prevent some evil or harm befalling the public and thereby to protect the public from the same. But if an inquiry becomes necessary for, say, administrative purposes, a law with respect to such an inquiry cannot be made under these two entries. And far less can a law be made with respect to an inquiry into any wrongs alleged to have been committed by an individual person or company or a group of them for the purpose of punishing the suspected delinquent. This argument has found favour with the High Court, but we are, with great respect, unable to accept this view. To adopt this view will mean adding words to the two entries so as to read "inquires... for the purpose of future legislation with respect to any of the matters in...." the List or Lists mentioned therein. The matter, however, does not rest here. A careful perusal of the language used in entry 45 in List III does, in our view, clinch the matter. Entry 45 in List III, which is the Concurrent List, speaks, inter alia, of "inquires..... for the propose of any of the matters in List II or List III. Under Art. 246 read with this entry, Parliament as well as the Legislature of a State may make a law with respect to "inquiries for the purpose of any of the matters in List II." Parliament, under Art. 246, has no power to make a law with respect to any of the matters enumerated in List II. Therefore, when Parliament makes a law under Art. 246 read with entry 45 in List III with respect to an inquiry for the purposes of any of the matters in List II, such law can never be one for inquiry for the purpose of future legislation by Parliament with respect to any of those matters in List II. Clearly Parliament can make a law for inquiry for the purpose of any of the matters in List II and none the less so though Parliament cannot legislate with respect to such matters and though none of the State Legislatures wants to Legislate on such matters. In our opinion, therefore, the law to be made by the

appropriate legislature with respect to the two legislative entries referred to above may cover inquiries into any aspect of the matters enumerated in any of the lists mentioned therein and is not confined to those matters as mere heads of legislative topic. Quite conceivably the law with respect to inquiries for the purpose of any of the matters in the lists may also be for administrative purposes and the scope of the inquiry under such a law will cover all matters which may properly be regarded as ancillary to such inquiries. The words "for the purposes of" indicate that the scope of the inquiry is not necessarily limited to the particular or specific matters enumerated in any of the entries in the list concerned but may extend to inquiries into collateral matters which may be necessary for the purpose, legislative or otherwise, of those particular matters. We are unable, therefore, to hold that the inquiry which may be set up by a law made under these two entries is, in its scope or ambit, limited to future legislative purposes only.

Learned counsel then takes us through the different heads of inquiry enumerated in the notification and urges that the inquiry is neither for any legislative nor for any administrative purpose, but is a clear usurpation of the functions of the judiciary. The argument is that Parliament in authorising the appointment of a Commission and the Government in appointing this Commission have arrogated to themselves judicial powers which do not, in the very nature of things, belong to their respective domains which must be purely legislative and executive respectively. It is contended that Parliament cannot convert itself into a court except for the rare cases of dealing with breaches of its own privileges for which it may punish the delinquent by committal for contempt or of proceedings by way of impeachment. It cannot, it is urged, undertake to inquire or investigate into alleged individual wrongs or private disputes nor can it bring the supposed culprit to book or gather materials for the purpose of initiating proceedings, civil or criminal, against him, because such inquiry or investigation is clearly not in aid of legislation. It is argued that if a criminal prosecution is to be launched, the preliminary investigation must be held under the Code of Criminal procedure and it should not be open to any legislature to start investigation on its own and thereby to deprive the citizen of the normal protection afforded to him by the provisions of the Code of Criminal procedure. This line of reasoning also found favour with the High Court which, after considering the provisions of the Act and the eleven heads of inquiry enumerated in the notification, came to the conclusion that the last portion of cl. (10) beginning with the words "and the action" and ending with the words "in future cases" were ultra vires the Act and that the Government was not competent to require the Commission to hold any inquiry or make any report with regard to the matters covered by that portion of cl. (10), for such inquiry or report amounts to a usurpation of the judicial powers of the Union or the State as the case may be.

While we find ourselves in partial agreement with the actual conclusion of the High Court on this point, we are, with great respect, unable to accept the line of reasoning advanced by learned counsel for the petitioners, which has been accepted by the High Court for more reasons than one. In the first place neither Parliament nor the Government has itself undertaken any inquiry at all. Parliament has made a law with respect to inquiry and has left it to the appropriate Government to set up a Commission of Inquiry under certain circumstances referred to in section 3 of the Act. The Central Government, in its turn, has, in exercise of the powers conferred on it by the Act, set up this Commission. It is, therefore, not correct to say that Parliament or the Government itself has undertaken to hold any inquiry. In the second place the conclusion that the last portion of cl. (10) is bad because it signifies that Parliament or the Government had usurped the functions of the judiciary appears to us, with respect, to be inconsistent with the conclusion arrived at in a later part of the judgment that as the Commission can only make recommendations which are not enforceable proprio vigore there can be no question of usurpation of judicial functions. As has been stated by the High Court itself in the latter part of its judgment, the only power that the Commission has is to

inquire and make a report and embody therein its recommendations. The Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called and consequently the question of usurpation by Parliament or the Government of the powers of the judicial organs of the Union of India cannot arise on the facts of this case and the elaborate discussion of the American authorities founded on the categorical separation of powers expressly provided by and under the American Constitution appears to us, with respect, wholly inappropriate and unnecessary and we do not feel called upon, on the present occasion, to express any opinion on the question whether even in the absence of a specific provision for separation of powers in our Constitution, such as there is under the American Constitution, some such division of powers - legislative, executive and judicial - is, nevertheless implicit in our Constitution. In the view we have taken it is also not necessary for us to consider whether, had the Act conferred on the appropriate Government power to set up a Commission of Inquiry with judicial powers, such law could not, subject, of course, to the other provisions of the Constitution, be supported as a law made under some entry in List I or List III authorising the setting up of courts read with these two entries, for a legislation may well be founded on several entries.

Learned Counsel appearing for the petitioners, who are appellants in Civil Appeals Nos. 456 and 457 of 1957, goes as far as to say that while the Commission may find facts on which the Government may take action, legislative or executive, although he does not concede the latter kind of action to be contemplated, the Commission cannot be asked to suggest any measure, legislative or executive, to be taken by the appropriate Government. We are unable to accept the proposition so widely enunciated. An inquiry necessarily involves investigation into facts and necessitates the collection of material facts from the evidence adduced before or brought to the notice of the person or body conducting the inquiry and the recording of its findings on those facts in its report cannot but be regarded as ancillary to the inquiry itself, for the inquiry becomes useless unless the findings of the inquiring body are made available to the Government which set up the inquiry. It is, in our judgment, equally ancillary that the person or body conducting the inquiry should express its own view on the facts found by it for the consideration of the appropriate Government in order to enable it to take such measure as it may think fit to do. The whole purpose of setting upon a Commission of Inquiry consisting of experts will be frustrated and the elaborate process of inquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures the situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view the recommendations of a Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. From this point of view, there can be no objection even to the Commission of Inquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquents in future. But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore and the statement made by any person before the Commission of Inquiry is, under section 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal, there can be no point in the

Commission of Inquiry making recommendations for taking any action "as and by way of securing redress or punishment" which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a court of law properly constituted exercising it sown discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high powered it may be. Having regard to all these considerations it appears to us that only that portion of the last part of cl. (10) which calls upon the Commission of Inquiry to make recommendations about the action to be taken "as and by way of securing redress or punishment", cannot be said to be at all necessary for or ancillary to the purposes of the Commission. In our view the words in the latter part of the section, namely, "as and by way of securing redress or punishment", clearly go outside the scope of the Act and such provision is not covered by the two legislative entries and should, therefore, be deleted. So deleted the latter portion of cl. (10) would read - "and the action which in the opinion of the Commission should be taken..... to act as a preventive in future cases".

Deletion of the words mentioned above from cl. (10) raises the question of severability. We find ourselves in substantial agreement with the reasons given by the High Court on this point and we hold that the efficacy of the notification is in no way affected by the deletion of the offending words mentioned above and there is no reason to think that the Government would not have issued the notification without those words. Those words do not appear to us to be inextricably would up with the texture of the entire notification.

The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Art. 14 of the Constitution. In Budhan Choudhry v. The State of Bihar ([1955] 1 S.C.R. 1045) a Constitution Bench of seven Judges of this Court at pages 1048-49 explained the true meaning and scope of Art. 14 as follows :

> "The provisions of Article 14 of the Constitution have come up for discussion before this court in a number of cases, namely, Chiranjit Lal Choudhuri v. The Union of India ([1950] S.C.R. 869), The State of Bombay v. F. N. Balsara ([1951] S.C.R. 682), The State of West Bengal v. Anwar Ali Sarkar ([1952] S.C.R. 284), Kathi Raning Rawat v. The State of Saurashtra ([1952] S.C.R. 435), Lachmandas Kewalaram Ahuja v. The State of Bombay ([1952] S.C.R. 710), Quasim Razvi v. The State of Hyderabad ([1953] S.C.R. 581) and Habeeb Mohamad v. The State of Hyderabad ([1953] S.C.R. 661). It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. 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 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 Court further establish -

(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 the 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 is called 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 of 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 only to a particular person or thing or only to a certain class of persons or

things. Where the court finds that the classification satisfied the tests, the court will uphold the validity of the law, as it did in Chiranjitlal Chowdhri v. The Union of India ([1950] S.C.R. 869), The State of Bombay v. F. N. Balsara ([1951] S.C.R. 682), Kedar Nath Bajoria v. The State of West Bengal ([1954] S.C.R. 30), V. M. Syed Mohammad & Company v. The State of Andhra ([1954] S.C.R. 1117) and Budhan Choudhry v. The State of Bihar ([1955] 1 S.C.R. 1045).

(ii) A statute may direct its provisions against one individual person or thing or to several individual person 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 ([1953] S.C.R. 404) and Ramprasad Narain Sahi v. The State of Bihar ([1953] S.C.R. 1129) .

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law, as it did in State of West Bengal v. Anwar Ali Sarkar ([1952] S.C.R. 284), Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh ([1954] S.C.R. 803) and Dhirendra Krishna Mandal v. The Superintendent and Remembrancer of Legal Affairs ([1955] 1 S.C.R. 224).

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification, the court will uphold the law as constitutional, as it did in Kathi Raning Rawat v. The State of Saurashtra ([1952] S.C.R. 135).

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the person or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow

such policy or principle, it has been held by this Court, e.g., in Kathi Raning Rawat v. The State of Saurashtra ([1952] S.C.R. 135) that in such a case the executive action but not the statute should be condemned as unconstitutional.

In the light of the foregoing discussions the question at once arises : In what category does the Act or the notification impugned in these appeals fall ?

It will be apparent from its long title that the purpose of the Act is to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers. Section 3 empowers the appropriate Government, in certain circumstances therein mentioned, to appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions within such time as may be specified in the notification. It seems clear - and it has not been controverted - that on a proper construction of this section, the functions the performance of which is contemplated must be such as are ancillary to and in aid of the inquiry itself and cannot be read as a function independent of or unconnected with such inquiry. That being the position, as we conceive it to be, the question arises as to the scope and ambit of the power which is conferred by it on the appropriate Government. The answer is furnished by the statute itself, for section 3 indicates that the appropriate Government can appoint a Commission of Inquiry only for the purpose of making an inquiry into any definite matter of public importance and into no other matter. In other words the subject matter of the inquiry can only be a definite matter of public importance. The appropriate Government, it follows, is not authorised by this section to appoint a Commission for the purpose of holding an inquiry into any other matter. Learned Solicitor-General, in the premises, submits that the section itself on the face of it, makes a classification so that this statute falls within the first category mentioned above and contends that this classification of things is based on an intelligible differentia which has a reasonable relation to the object sought to be achieved by it, for a definite matter of public importance may well call for an inquiry by a Commission. In the alternative the learned Solicitor-General urges that in any case the section itself quite clearly indicates that the policy of Parliament is to provide for the appointment of Commissions of Inquiry to inquire into any definite matter of public importance and that as there is no knowing when, where or how any such matter may crop up Parliament considers it necessary or expedient to leave it to the appropriate Government to take action as and when the appropriate moment will arrive. In the tempo of the prevailing conditions in modern society events, occur which were never foreseen and it is impossible for Parliament or any legislature to anticipate all events or to provide for all eventualities and, therefore, it must leave the duty of taking the necessary action to the appropriate Government. This delegation of authority, however, is not unguided or uncontrolled, for the discretion given to the appropriate Government to set up a Commission of Inquiry must be guided by the policy laid down, namely, that the executive action of setting up a Commission of Inquiry must conform to the condition of the section, that is to say, that there must exist a definite matter of public importance into which an inquiry is, in the opinion of the appropriate Government, necessary or is required by a resolution in that behalf passed by the House of the people or the Legislative Assembly of the State. If the preambles or the provisions of the statutes classed under the first category mentioned above could be read as making a reasonable classification satisfying the requirements of Art. 14 and if the preamble to the statute considered in the case of Kathi Raning Rawat ([1952] S.C.R. 435) could be construed as laying down sufficiently clearly a policy or principle for the guidance of the executive, what objection can there be to construing section 3 of the Act now under our consideration as also making a reasonable classification or at any rate as declaring with sufficient clarity the policy of parliament and laying down a principle for the guidance of the exercise of the powers conferred on the appropriate Government so as to bring this statute at least in the fourth category, if not also in the first category

? On the authorities, as they stand, it cannot be said that an arbitrary and uncontrolled power has been delegated to the appropriate Government and that, therefore, the law itself is bad.

Learned counsel for the petitioners next contends that if the Act is good in the sense that it has declared its policy and laid down some principle for the guidance of the Government in the exercise of the power conferred on it, the appropriate Government has failed to exercise its discretion properly on the basis of a reasonable classification. Article 14 protects all persons from discrimination by the legislative as well as by the executive organ of the State. "State" is defined in Art. 12 as including the Government and "law" is defined in Art. 13 as including any notification or order. It has to be conceded, therefore, that it is open to the petitioners also to question the constitutionality of the notification. The attack against the notification is that the Government has not properly implemented the policy or followed the principle laid down in the Act and has consequently transgressed the bounds of the authority delegated to it. It is pointed out that in March, 1946, one Shri Tricumdas Dwarkadas, a solicitor of Bombay, had been appointed an officer on Special Duty to indicate the lines on which the Indian Companies Act was to be revised. He made a report which was, however, incomplete in certain particulars. Thereupon the Government appointed Shri Thiruvenkatachari, the Advocate-General of Madras, to make further inquiry. The last mentioned gentleman submitted his report and on the basis of that report, it is said, a memorandum containing tentative proposals was prepared and circulated to elicit the opinions of various organizations. On October 28, 1950, a Committee called the Indian Company law committee-popularly known as the Bhaba Committee-was appointed. That Committee went round and collected materials and made its comprehensive report on the basis of which the new Indian Companies Act has recently been remodelled. As nothing new has since then happened why, it is asked, should any further inquiry be made ? The conclusion is pressed upon us that there can, in the circumstances, be no definite matter of public importance which can possibly call for an inquiry. We find no force in this argument. In the first place the Bhaba Committee at p. 29 of its Report recommended that further inquiries may, in future, have to be made regarding some matters relating to Companies and, therefore, the necessity for fresh inquiry cannot be ruled out. In the next place the appropriate Government is empowered to appoint a Commission of Inquiry if, in its opinion, it is necessary so to do. The preambles to the notification recite that certain matters enumerated under five heads had been made to appear to the Central Government in consequence of which the Central Government had come to the conclusion that there should be a full inquiry into those matters which, in its opinion, were definite matters of public importance both by reason of the grave consequences which appeared to have ensued to the investing public and for determining such measures a might be deemed necessary in order to prevent a recurrence thereof, Parliament in its wisdom has left the matter of the setting up of a Commission of Inquiry to the discretion of the appropriate Government and if the appropriate Government has formed the opinion that a definite matter of public importance has arisen and calls for an inquiry the court will not lightly brush aside the opinion.

Learned counsel for the petitioners argues that granting that the question as to the necessity for constituting a Commission of Inquiry has been left to the subjective determination of the appropriate Government the actual setting up of a Commission is conditioned by the existence of some definite matter of public importance. If there be no such definite matter of public importance in existence then no question of necessity for appointing a Commission can arise. Reference is then made to the first preamble to the notification and it is pointed out that all the matters alleged to have been made to appear to the Central Government relate to some supposed act or conduct of the petitioners. The contention is repeated that the act and conduct of individual persons can never be regarded as definite matters of public importance. We are unable to accept this argument as sound, for as we have already stated, the act or conduct of individuals may assume such dangerous

proportions as may well affect the public well-being and thus become a definite matter of public importance. We do not, therefore, agree that the notification should be struck down for the absence of a definite matter of public importance calling for an inquiry.

The point which is next urged in support of these appeals and which has given us considerable anxiety is that the petitioners and their companies have been arbitrarily singled out for the purpose of hostile and discriminatory treatment and subjected to a harassing and oppressive inquiry. The provisions of Art. 14, it is contended, protect every person against discrimination by the State, namely, against the law as well as the executive action and this protection extends to State action at all its stages. The petitioners grievance is that the Government had started discrimination even at the earliest stage when it conceived the idea of issuing the notification. Reference is made to the Memorandum filed by the Bombay Shareholders' Association before the Bhaba Committee showing that the same or similar allegations had been made not only against the petitioners and their companies but against other businessmen and their companies and that although the petitioners and their companies and those other persons and their companies were thus similarly situate, in that allegations had been made against both, the Government arbitrarily applied the Act to the petitioners and their companies and issued the notification concerning them but left out the others from its operation. It is true that the notification primarily or even solely affects the petitioners and their companies but it cannot be overlooked that parliament having left the selective application of the Act to the discretion of the appropriate Government, the latter must of necessity take its decision on the materials available to it and the opinion it forms thereon. The appropriate Government cannot in such matters be expected to sit down and hold a judicial inquiry into the truth of the materials brought before it, and examine the informants on oath in the presence of the parties who are or may be likely to be affected by its decision. In matters of this kind the appropriate Government has of necessity to act upon the information available to it. It is the best judge of the reliability of its source of information and if it acts in good faith on the materials brought to its notice and honestly comes to the conclusion that the act and conduct of the petitioners and the affairs of their companies constitute a definite matter of public importance calling for an inquiry with a view to devise measures for preventing the recurrence of such evil, this Court, not being in possession of all the facts will, we apprehend, be slow to adjudge the executive action to be bad and illegal. We are not unmindful of the fact that a very wide discretionary power has been conferred on the Government and, indeed, the contemplation that such wide powers in the hands of the executive may in some cases be misused or abused and turned into an engine of oppression has caused considerable anxiety in our mind. Nevertheless, the bare possibility that the powers may be misused or abused cannot per se induce the court to deny the existence of the powers. It cannot be overlooked that parliament has confided this discretion, not to any petty official but to the appropriate Government itself to take action in conformity with the policy and principle laid down in the Act. As this Court has said in Matajog Dobey v. H. C. Bhari ([1955] 2 S.C.R. 925, 932), "a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official." We feel sure, however, that if this law is administered by the Government "with an evil eye and an unequal hand" or for an oblique or unworthy purpose the arms of this Court will be long enough to reach it and to strike down such abuse with a heavy hand. What, then, we inquire, are the salient facts here ? The Central Government appointed investigators to scrutinise the affairs of three of the petitioners' concerns. Those investigators had made their reports to the Central Government. The Central Government had also the Bhaba Committee Report and all the Memoranda filed before that Committee. It may also have had other information available to it and on those materials it formed its opinion that the act and conduct of the petitioners and the affairs of their companies constituted a definite matter of

public importance which required a full inquiry. Up to this stage there is no question of legal proof of the allegations against the petitioners as in a court of law. The only question is : do those allegations if honestly believed, constitute a definite matter of public importance ? We are unable to say that they do not.

Reference is again made to the several matters enumerated in the five clauses set out in the first preamble to the notification and it is urged that those matters do not at all disclose any intelligible differentia on the basis of which the petitioners and their companies can be grouped together as a class. On the part of the Union of India reference is made to the affidavits affirmed by Shri H. M Patel, the principal Secretary to the finance Ministry of the Government of India purporting to set out in detail as the background thereof, the circumstances which led to the issue of the impugned notification and the matters recited therein and the several reports referred to in the said affidavit. Learned counsel for the petitioners take the objection that reference cannot be made to any extraneous matter and that the basis of classification must appear on the face of the notification itself and reliance is placed on certain observations in the dissenting judgments in Chiranjitlal Chowdhury's case ([1950] S.C.R. 869) and in item (2) of the summary given by Fazl Ali J. in his judgment in F. N. Balsara's case ([1951] S.C.R. 682). In Chiranjitlal Chowdhury's case ([1950] S.C.R. 869) the majority of the Court read the preamble to the Ordinance which was replaced by the Act which was under consideration there as part of the Act and considered the recitals, reinforced as they were by the presumption of validity of the Act, as prima facie sufficient to constitute an intelligible basis for regarding the company concerned as a class by itself and held that the petitioner there had not discharged the onus that was on him. The dissenting Judges, after pointing out that the petition and the affidavit did not give any indication as to the differentia on the basis of which the company had been singled out, went on to say that the statute also did not on the face of it indicate any basis of classification. This was included in cl. (2) of the summary set out in the judgment in F. N. Balsara's case ([1951] S.C.R. 682). Those observations cannot, therefore, be read as meaning that the classification must always appear on the face of the law itself and that reference cannot be made to any extraneous materials. In fact in Chiranjitlal Chowdhury's case ([1950] S.C.R. 869) parliamentary proceedings, in so far as they depicted the surrounding circumstances and furnished the background, were referred to. In kathi Raning Rawat's case ([1952] S.C.R. 435) the hearing was adjourned in order to enable the respondent to put in an affidavit setting forth the material circumstances. In Kedarnath Bajoria's case ([1954] S.C.R. 30) the situation brought about by the war conditions was taken notice of. The same may be said of the cases of A. Thangal Kunju Musaliar v. V. Venkitachalam Potti ([1955] 2 S.C.R. 1196) and Pannalal Binjraj v. Union of India ([1957] S.C.R. 233). In our judgment, therefore, there can be no objection to the matters brought to the notice of the court by the affidavit of Shri H. M. Patel being taken into consideration along with the matters specified in the notification in order to ascertain whether there was any valid basis for treating the petitioners and their companies as a class by themselves.

Learned counsel for the petitioners next urges that even if the matters referred to in Shri H. M. Patel's affidavits and those appearing on the face of the notification are taken into consideration one cannot deduce therefrom any differentia which may be taken to distinguish the petitioners and their companies from other persons and their companies. The qualities and characteristics imputed to the petitioners and their companies are not at all peculiar or exclusive to them but are to be found equally in other persons and companies and yet they and their companies have been singled out for hostile and discriminatory treatment leaving out other persons and companies which are similarly situate. There is no force in this argument. Parliament has confided the task of the selective application of the law to the appropriate Government and it is, therefore for the appropriate Government to exercise its discretion in the matter. It is to be expected - and, until the contrary is

proved, it is to be presumed - that the Government, which is responsible to Parliament, will act honestly, properly and in conformity with the policy and principle laid down by Parliament. It may well be that the Central Government thought that even if one or more of the particular qualities and characteristics attributed to the petitioners and their companies may be found in another person or company, the combination of those qualities and characteristics which it thought were present in the petitioners and their companies was of a unique nature and was not present in any other person or company. In its appreciation of the material facts preparatory to the exercise of the discretion left to it by Parliament the Central Government may have thought that the evil was more pronounced in the petitioners and their concerns than any other person or concern and that the need for an inquiry was more urgent and clear in the case of the petitioners and their companies than in the case of any other person or company. What is the gist and substance of the allegations against the petitioners and their companies ? They are that a small group of persons had from before 1946 acquired control over a number of companies including a banking company and an insurance company; that some of these companies were private companies and the others were public companies in which the public had invested considerable moneys by buying shares; that the financial years of some of these companies were different from those of the others; that the funds of the limited companies were utilised in purchasing shares in other companies having large reserve funds with a view to get control over them and to utilise those funds for acquiring shares in other companies or otherwise utilise those funds for the personal benefit of these individuals; that the shares were acquired on blank transfer deeds and were not registered in the names of the companies with whose funds they were purchased as to permit the same shares to be shown in the balance sheets of the different companies having different financial years; that after 1951 several of these companies were taken into voluntary liquidation or their assets were transferred to another company under some pretended scheme of arrangement or re-organisation; that after getting control of a company they appointed some of themselves as managing director or selling agent on high remuneration and after a while cancelled such appointment on paying fabulous amounts as and by way of compensation; that funds of one company were transferred to another company to cover up the real financial position. It is needless to add other allegations to explain the matter. The question before us is not whether the allegations made on the face of the notification and in the affidavits filed on behalf of the Union of India are true but whether the qualities and characteristics, if honestly believed to be found in the petitioners, are so peculiar or unique as to constitute a good and valid basis on which the petitioners and their companies can be regarded as a class by themselves. We are not of opinion that they do not. It is not for us to say on this application and we do not in fact say or even suggest that the allegations about the petitioners and their concerns are at all well founded. It is sufficient for our present purpose to say that the facts disclosed on the face of the notification itself and the facts which have been brought to our notice by the affidavits afford sufficient support to the presumption of constitutionality of the notification. There being thus a presumption of validity in favour of the Act and the notification, it is for the petitioners to allege and prove beyond doubt that other persons or companies similarly situate have been left out and the petitioners and their companies have been singled out for discriminatory and hostile treatment. The petitioners have, in our opinion, failed to discharge that onus. Indeed nowhere in the petitions in there even an averment that there are other persons or companies similarly situate as the petitioners and their companies. It has to be remembered that the allegations set forth in the memorandum submitted by the Bombay Shareholders' Association to the Bhaba Committee have not been proved by legal evidence. And further that report itself contains matters which may be taken as calculated to lend support to the view that whether regard is had to the combination of a variety of evils or to their degree, the petitioners may quite conceivably be grouped as a class by themselves. In our judgment the plea of the infraction of the equal protection clause of our Constitution cannot be sustained.

The next contention is that the notification is bad, because the action of the Government in issuing it was mala fide and amounted to an abuse of power. Learned counsel appearing for the petitioner, who is the appellant in Civil Appeal No. 455 of 1957, makes it clear that no personal motive or ill will against the petitioners is imputed to any one, but he points out that the Bhaba Committee had been set up and the Companies Act has been remodelled and, therefore, the present Commission was not set up for any legitimate purpose. The main idea, according to learned counsel, was to obtain information which the Government could not get by following the ordinary procedure under the Code of Criminal Procedure and this ulterior motive clearly makes the governmental action mala fide. This point has been further emphasised by learned counsel appearing for the petitioners, who are appellants in Civil Appeals Nos. 456 and 457 of 1957. He has drawn our attention to the affidavits filed by his clients and contends that it was well-known to the Government that none of them was concerned in promoting or managing any of the companies and their position being thus well-known to the Government, their inclusion in the notification was both outside the power conferred by the Government and also constituted a mala fide exercise of the power conferred on it. No substantial ground in support of this point has been brought before us and we are not satisfied that the circumstances referred to in the notification and the affidavits filed on behalf of the Union of India, may not, if true, be the basis of a further inquiry into the allegations and come to its own findings and make its report containing its recommendations. It is not desirable that we should say anything more on this point. All that we need say is that the charge of male fides has not been brought home to the Government.

A point was taken that the original notification was defective in that it did not fix the time within which the Commission was to complete its report and that a subsequent notification fixing a time could not cure that defect. We do not think there is any substance in this too. The third notification quoted above amended the original notification by fixing a time. There was nothing to prevent the Government from issuing a fresh notification appointing a Commission and fixing a time. If that could be done, there was no reason why the same result could not be achieved by the combined effect of two notifications. In any case the amending notification taken together with the original notification may be read as a fresh notification within the meaning of section 3 of the Act, operative at least from the date of the later notification.

It is feebly argued that the notification is bad as it amounts to a delegation of essential legislative function. Assuming that there is delegation of legislative function, the Act having laid down its policy, such delegation of power, if any, is not vitiated at all, for the legislation by the delegatee will have to conform to the policy so laid down by the Act. Lastly a point is raised that the notification is bad because it violates Art. 23 of the Constitution. It is frankly stated by the learned counsel that this point is rather premature at this stage and that he desires to reserve his client's right to raise it in future.

No other point has been urged before us and for reasons stated above the appeals Nos. 455, 456 and 457 of 1957 are dismissed with costs. Appeals Nos. 656, 657 and 658 of 1957 succeed only in part, namely, to the extent that only the words "by way of redress or punishment" occurring in the latter portion of cl. (10) will be deleted so that the latter portion of cl. (10) will read as : "and the action which in the opinion of the Commission should be taken..... to act as a preventive in future cases" as indicated above. We make no order as to the costs of these three appeals.

C.A. Nos. 455, 456 and 457 of 1957 dismissed.

C.A. Nos. 656, 657 and 658 of 1957 partly allowed.

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