State of Jammu and Kashmir

Vs

Bakshi Ghulam Mohammad

Civil Appeal No. 1102 of 1966

(CJI A. K. Sarkar, M. Hidayatullah, J. R. Mudholkar, R. S. Bachawat, J. M. Shelat JJ)

06.05.1966

JUDGMENT

SARKAR, C.J.-

This is an appeal by the State of Jammu and Kashmir, G. M. Sadiq, Chief Minister of that State and D. P. Dhar, its Home Minister. The appeal is contested by respondent No. 1, Bakshi Ghulam Mohammad. The other respondent, N. Rajagopala Ayyangar, a retired Judge of this Court, has not appeared in this Court or in the court below. These are the parties to the proceedings before us.

After the accession of the State of Jammu and Kashmir to India in 1947, a responsible Government was set up there under the Prime Ministership of Shiekh Mohammad Abdulla. Bakshi Ghulam Muhammad was the Deputy Prime Minister in that Government and G. M. Sadiq was also in the Cabinet. In 1953 Sheikh Mohammad Abdulla was dismissed from office and a new Government was formed with Bakshi Ghulam Mohammad as the Prime Minister and G. M. Sadiq and D. P. Dhar were included in the Cabinet. On January 26, 1957, a new Constitution was framed for Jammu & Kashmir. In the first elections held under the Constitution, a party called the National Conference got the majority of votes. Bakshi Ghulam Mohammad and Sadiq were members of this party. A Ministry was then formed with bakshi Ghulam Mohammad as the Prime Minister. It appears that G. M. Sadiq left the party sometime after 1957 and re-joined it along with D. P. Dhar in December 1960 and they were taken into the Cabinet. The next General Elections were held in 1962. Again, the National Conference Party came into power. In the Government that was formed, Bakshi Ghulam Mohammad became the Prime Minister and G. M. Sadiq and D. P. Dhar were taken in the Ministry. In September 1963, Bakshi Ghulam Mohammad resigned from the Ministry under what is called the Kamraj Plan and Shamsuddin became the Prime Minister in his place. It will be noticed that Bakshi Ghulam Mohammad was the Deputy Prime Minister of the State from 1947 to 1953 and its Prime Minister from 1953 to 1963. So he held these offices, one after the other, for a total period of about sixteen years.

In February 1964, Shamsuddin left office and a new Government was formed with G. M. Sadiq as the Prime Minister. It is said that shortly thereafter, political rivalry between him and Bakshi Ghulam Mohammad started. In August 1964, a notice was issued fixing a session of the legislature of the State in the following September. According to Bakshi Ghulam Mohammad, thereafter, some of the legislators wanted to bring in vote of no-confidence against G. M. Sadiq's Ministry and by September 21, 1964 the no-confidence motion had obtained the support of the majority of members of the Assembly. On September 22, 1964, at 5 o'clock in the morning, Bakshi Ghulam Mohammad and some of his supporters were arrested under the Defence of India Rules. At 8.30 a.m. on the same day, the notice of the motion of no-confidence with the signatures of some members was

handed over to the Secretary of the Legislative Assembly. G. M. Sadiq challenges the genuineness of the signatures on the notice of the motion and also denies that it had the support of a majority of the Assembly. At 9 a.m. the Legislative Assembly which was to meet on that day, was prorogued by the Speaker under the directions of the Sadar-i-Riyasat, the constitutional head of the State. Sometime in November 1964, a petition for a writ of habeas corpus for the release of Bakshi Ghulam Mohammad was presented to the High Court of Jammu and Kashmir. On December 15, 1964, before the petition could be heard and decided, Bakshi Ghulam Mohammad was released from arrest by the State Government. On January 30, 1965, a Notification was issued by the State Government appointing a Commission of Inquiry constituted by N. Rajagopala Ayyangar to enquire into (1) the nature and extent of the assets and pecuniary resources of Bakshi Ghulam Mohammad and the members of his family and other relatives mentioned in the first Schedule to the Order, in October 1947 and in October 1963; and (ii) whether during this period, Bakshi Ghulam Mohammad and the others mentioned in the Schedule had obtained any assets and pecuniary resources or advantages by Bakshi Ghulam Mohammad abusing the official positions held by him or by the aforesaid people set out in they first Schedule by exploiting that position with his knowledge, consent and connivance. The Notification provided that in making the inquiry under head (ii) the Commission would examine only the allegations set out in the second Schedule to it. It is this Notification that has given rise to the present proceedings.

The Commission held certain sittings between February 1965 and August 1965 in which Bakshi Ghulam Mohammad took part. On September 1, 1965, Bakshi Ghulam Mohammad moved the High Court of Jammu and Kashmir under ss. 103 and 104 of the Constitution of Jammu and Kashmir, which correspond to Arts. 226 and 227 of the Indian Constitution, for a writ striking down the Notification and quashing the proceedings of the Commission taken till then and for certain other reliefs to which it is not necessary to refer. The petition was heard by a Bench of three learned Judges of the High Court. The High Court allowed the petition, set aside the Notification and quashed the proceedings of the Commission. This appeal is against the judgment of the High Court. In the High Court, eight grounds had been advanced in support of the petition, there of which were rejected by the rest were accepted, some unanimously and some by the majority of the learned Judges. They have however not all been pressed in this Court.

The Notification had been issued under the Jammu & Kashmir Commission of Inquiry Act, 1962. The first point taken was that the Notification was not justified by the Act because under the Jammu & Kashmir Constitution, a Minister was responsible for his acts only to the Legislature and no action could be taken against him except for criminal and tortious acts in the ordinary courts of law, unless the Legislature by a resolution demanded it. The substance of this contention is that an inquiry cannot be directed under the Act into the actions of a Minister except at the instance of the Legislature, it cannot be directed by an order of the Government. This contention is based on s. 37 of the Jammu & Kashmir Constitution. That section states that the Council of Ministers shall be collectively responsible to the Legislative Assembly. It is contented that this implies that in no other way is a Minister responsible for anything that he does when in office. It is also said that that is the convention in Britain and it has been adopted in the State of Jammu & Kashmir.

We confess to a certain amount of difficulty in appreciating this argument. The point about the British convention need not detain us. It has not been shown that any such convention, even if it exists in England, as to which we say nothing, has been adopted in the State of Jammu & Kashmir. The Jammu & Kashmir Constitution is a written document and we can only be guided by its provisions. It is said that s. 37 indicates that the British convention was adopted by the State of Jammu & Kashmir. We are unable to agree with this view. Section 37 talks of collective

responsibility of Ministers to the Legislative Assembly. That only means that the Council of Ministers will have to stand or fall together, every member being responsible for the action of any other. The emphasis is on collective responsibility as distinguished from individual responsibility. The only way that a legislature can effectively enforce this responsibility of the Council of Ministers to it is by voting it out of office. Furthermore, this responsibility is of the Council of Ministers. Bakshi Ghulam Mohammad did not, at the date of the Notification, belong to that Council. He did not on that date owe any responsibility to the Legislature under s. 37. That section has no application to this case. Again s. 37 of the Inquiry Act states, "The Government may.....and shall.....if a resolution in this behalf is passed by the Jammu & Kashmir State Legislative Assembly or the Jammu & Kashmir Legislative Council by notification.....appoint a Commission of Inquiry". It would, therefore, appear that the Act gave power to the Government to set up a Commission and also to both the Houses of the Legislature to require a Commission to be set up. It is important to note that even the Legislative Council has a right to get a Commission appointed though s. 37 of the Constitution does not say anything about the responsibility of the Ministers to that Council. The Act was passed by the State Legislature consisting of both the Houses. It would show that the Legislature did not consider that there was any convention or anything in s. 37 which prevented a Commission of Inquiry being set up under the Act at the instance of the Government or the Legislative Council. The High Court had rejected this contention and we think that it did so rightly.

The next point urged in support of the petition was that the Act permitted a Commission to be set up for making an inquiry into a definite matter of public importance and the matters which the Commission had been set up to inquire into were not such. This contention found favour with all the learned Judges of the High Court. We are, however, unable to accept it. It is true that a Commission can be set up only to inquire into a definite matter of public importance. But we think that the matters into which the Commission was asked to inquire were such matters. The first inquiry was as to the assets possessed by Bakshi Ghulam Mohammad and the other persons mentioned in the Notification, in October 1947 and in October 1963 and the second was whether during this period being the sixteen years when he held office as Prime Minister and Deputy Prime Minister, he and the other persons named had obtained any assets or pecuniary advantage by abuse of his official position or by that position being exploited by the officers with his consent, knowledge or connivance, this inquiry being confined only to the instances set out in the second Schedule to the Notification. That Schedule contains 38 instances, the first of which, in substance, repeats the second head of inquiry earlier mentioned. The other items refer to individual instances of people being made to part with property under pressure brought upon them by abuse of official position and of public money being misappropriated. At the end of this Schedule, there is a note stating that the gravamen of the charge was that Bakshi Ghulam Mohammad abused his official position and the other persons named, exploited that position with his consent, knowledge or connivance in committing the acts whereby they acquired vast wealth. The inquiry was, therefore, into the assets possessed by Bakshi Ghulam Mohammad and the persons named, respectively in October 1947 and in October 1963 and to find out whether they had during this period acquired wealth by the several acts mentioned in the second Schedule by abuse or exploitation of Bakshi Ghulam Mohammad's official position.

The first question is, whether these are matters of public importance. Two of the learned Judges held that they were not and the third took the contrary view. This was put on two grounds. First, it was said that these matters were not of public importance because they had to be so at the date of the Notification and they were not so on that date as Bakshi Ghulam Mohammad did not then hold any office in the Government. It was next said that there was no evidence of public agitation in respect

of the conduct complained of and this showed that they were not matters of public importance. We do not think that either of these grounds leads to the view that the matters were not of public importance. As regard the first, it is difficult to imagine how a Commission can be set up by a Council of Ministers to inquire into the acts of its head, the Prime Minister, while he is in office. It certainly would be a most unusual thing to happen. If the rest of the Council of Ministers resolves to have any injury, the Prime Minister can be expected to ask for their resignation. In any case, he would himself go out. If he takes the first course, then no Commission would be set up for the Ministers wanting the inquiry would have gone. If he went out himself, then the Commission would be set up to inquire into the acts of a person who was no longer in office and for that reason, if the learned Judges of the High Court were right, into matters which were not of public importance. The result would be that the acts of a Prime Minister could never be inquired into under the Act. We find it extremely difficulty to accept that view.

These learned Judges of the High Court expressed the view that the acts of Bakshi Ghulam Mohammad would have been acts of public importance if he was in office but they ceased to be so as he was out of office when the Notification was issued. In taking this view, they appear to have based themselves on the observation made by this Court in Ram Krishan Dalmia v. Shri Justice S. R. Tendolkar [[1959] S.C.R. 279] that "the conduct of an individual 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". The learned Judges felt that since Bakshi Ghulam Mohammad was out of office, he had become innocuous; apparently, it was felt that he could no longer threaten the public well-being by his acts and so was outside the observation in Dalmia's case. We are clear in our mind that this is a misreading of this Court's observation. This Court, as the learned Judges themselves noticed, was not laying down an exhaustive definition of matters of public importance. What is to be inquired into in any case are necessarily past acts and it is because they have already affected the public well-being or their effect might do so, that they became matters of public importance. It is irrelevant whether the person who committed those acts is still in power to be able to repeat them. The inquiry need not necessarily be into his capacity to do again what he has already done and it may well be into what he has done. The fact that Bakshi Ghulam Mohammad is no longer in office does not affect he question whether his acts already done constitute matters of public importance. If once it is admitted, as it was done before us, that if he had been in office his acts would have been matters of public importance, that would be acknowledging that his acts were of this character. His resignation from office cannot change that character. A Minister, of course, holds a public office. His acts are necessarily public acts if they arise out of his officer. If they are grave enough, they would be matters of public importance. When it is alleged that a Minister has acquired vast wealth for himself, his relations and friends, as is done here, by abuse of his official position, there can be no question that the matter is of public importance.

It was said that the object of inquiry was to collect material for the prosecution of Bakshi Ghulam Mohammad and, therefore, the matters to be inquired into were not of public importance. This contention is, in our view, fallacious. It is of public importance that public men failing in their duty should be called upon to face the consequences. It is certainly a matter of importance to the public that lapses on the part of the Ministers should be exposed. The cleanliness of public life in which the public should be vitally interested, must be a matter of public importance. The people are entitled to know whether they have entrusted their affairs to an unworthy man. It is said that the Notification did not mention anything about the steps to be taken to prevent recurrence of the lapses in future. But that it could not do. Before the facts were found steps could not be thought of, for the steps had to suit the facts. The inquiry proposed in this case will, in the course of finding out the lapses

alleged, find out the process as to how they occurred and it is only after the process is known that steps can be devised to meet them.

It was also contended that the inquiry was into allegations of misconduct against Bakshi Ghulam Mohammad and an inquiry into allegations was not contemplated by the Inquiry Act. We are wholly unable to agree. An inquiry usually is into a question. That question may arise on allegations made. Dalmia's case [[1959] S.C.R. 279] dealt with an inquiry ordered at least in part into allegations made against people in charge of a big mercantile enterprise. Allegations may very well raise questions of great public importance. Suppose it is alleged that people in a city are suffering from ill-health and that the is due to the contaminated water supplied by the city administration. It cannot be said that these allegations about the existence of poor health and its causes are not matters of grave public importance. They would be so even if it was found that the people's health was not poor and the water was not contaminated. It cannot also be said that allegations can never be definite. They can be as definite as any existing concrete matter. It must depend on what the allegation is.

Then as to the question whether the allegations against Bakshi Ghulam Mohammad were not matters of public importance because there was no public agitation over them. The Notification itself and the affidavits filed in this case on behalf of the appellants in fact state that there had been allegation made by the public against Bakshi Ghulam Mohammad that he had amassed a large fortune by the misuse of his office. But it was said that there was no proof that the allegations had actually been made. Whether there was proof would depend on whether the statements in the Notification and the affidavits were accepted or not. We are, however, unable to agree that a matter cannot be of public importance unless there was public agitation over it. Public may not be aware of the gravity of the situation. They may not know the facts. Some members of the public may be aware of individual cases but the entire public may not know all of them. There may have been influences working to prevent public agitation. Again, whether a matter is of public importance or not has to be decided essentially from its intrinsic nature. If a matter is intrinsically of public importance, it does not cease to be so because the public did not agitate over it. Take this case. Suppose the Government sets up a Commission to inquire into the mineral wealth in our country. The public are not likely to agitate over this matter for they would not know about the mineral wealth at all. Can it be said that the inquiry does not relate to a matter of public importance because they did not agitate over it ? The answer must plainly be in the negative. This would be so whether there were in fact minerals or not. Considering the allegations contained in the Notification by themselves, we think for the reasons earlier mentioned, that they constitute matters of public importance even if there was no public agitation over them. It was said that G.M. sadiq, D. P. Dhar and various other people had praised the administration of Bakshi Ghulam Mohammad. That they no doubt did. But these were speeches made in support of party politics. The might again have been made without knowledge of full facts. They cannot, in any event, turn a matter of public importance into one not of that character.

It was then pointed out that the Notification only mentioned that the matters were of public importance but did not say that they were definite matters of public importance. The Act, as we have earlier pointed out, requires that the matters to be inquired into shall be definite matters of public importance. But this omission of the word "definite" in the Notification does not, in our opinion, make any difference. A Court can decide whether the matters to be inquired into are definite matters of public importance. 'Definite' in this connection means something which is not vague. One of the learned Judges of the High Court held that the matters set out in the second Schedule were vague as some of the instances did not give any date or year. He also said that the

note at the end of the second Schedule, to which we have earlier referred, added to the vagueness. We are unable to accede to this view. What the learned Judge had in mind was apparently the particulars of the acts. In most cases, the acts are identifiable from the particulars given in the second Schedule in respect of them. Further, it is obvious that they had to be identified at the hearing and could not be proved nor any notice taken of them unless that was done. It does not appear to have been contended before the Commission that there was any matter not no identifiable. Neither do we think that the note drawing attention to the gravamen of the charges at the end of the second schedule indicates any indefiniteness. In most of the allegations it had been expressly stated that the act was done by the misuse of Bakshi Ghulam Mohammad's officio position and by his permitted other to exploit that - it is this which made the matters, matters of public importance - and it was for greater safety that the note was appended so that no doubt was left as to the gravamen of the charge in each of the allegations made.

The next point against the validity of the Notification was based on s. 10 of the Act which is in these terms :-

> "10. (1) If at any stage of the inquiry the Commission considers it necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially effected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and producing evidence in his defence;

Provided that nothing in his sub-section shall apply when the credit of a witness is being impeached.

> (2) The Government, every person referred to in sub-section (1) and with the permission of the Commission, any other person whose evidence is recorded by the Commission :-
>
> (a) may cross-examine any person appearing before the Commission other than a person produced by it or him as a witness,
>
> (b) may address the Commission.
>
> #(3) . . . . .".##

It was contended that it showed that an inquiry may be made under the Act into the conduct of a person only incidentally, that is to say, it can be made only when that becomes necessary in connection with an inquiry into something else. It was, therefore, contended that the present inquiry which was directly into the conduct of Bakshi Ghulam Mohammad was outside the scope of the Act. It was also said that s. 10 gives a statutory form to the rules of natural justice and provides for the application of such rules only in the case when a person's conduct comes up for inquiry by the Commission incidentally. It was then said that the Act could not have contemplated an inquiry directly into the conduct of an individual since it did not provide specifically that he should have the right to be heard, the right to cross-examine and the right to lead evidence which were given by s. 10 to the person whose conduct came to be inquired into incidentally. We are unable to accept this view of s. 10. Section 3 which permits a Commission of Inquiry to be appointed is wide enough to cover an inquiry into the conduct of any individual. It could not be a natural reading of the Act to cut down the scope of s. 3 by an implication drawn from s. 10. We also think that this argument is illfounded for we are unable to agree that s. 10 does not apply to a person whose conduct comes up

directly for inquiry before a Commission set up under s. 3. We find nothing in the words of s. 10 to justify that view. If a Commission is set up to inquire directly into the conduct of a person, the Commission must find it necessary to inquire into that conduct and such a person would, therefore, be one covered by s. 10. It would be strange indeed if the Act provided for rights of a person whose conduct incidentally came to be enquired into but did not do so in the case of persons whose conduct has directly to be inquired into under the order setting up the Commission. It would be equally strange if the Act contemplated the conduct of a person being inquired into incidentally and not directly. What can be done indirectly should obviously have been considered capable of being done directly. We find no justification for accepting the reading of the Act which learned counsel for Bakshi Ghulam Mohammad suggests.

The next attack on the Notification was that it had been issued mala fide. One of the learned Judges of the High Court expressly rejected this contention and the others also seem to have been of the same view for they did not accept it. We find no reason to accept it either. In that view of the matter, we consider it unnecessary to discuss this aspect of the case in great detail. We have set out the broad events of the case and it is on them that the case of mala fide is based. It is not in dispute that for some time past there was political rivalry between Bakshi Ghulam Mohammad and G. M. Sadiq. It was also said that there was personal animosity because G. M. Sadiq wanted to advance the interest of his relatives and followers by ousting persons belonging to Bakshi Ghulam Mohammad's group in various fields. This allegation of personal animosity cannot be said to have been established. It is really on the political rivalry and the events happening since September 21, 1964 that the allegation of male fide is founded. It was said that the steps taken since the arrest of Bakshi Ghulam Mohammad down to the setting up of the Commission of Inquiry were all taken with the intention of driving him out of the political life so that G. M. Sadiq would have no rival as a political leader. First, as to the arrest. The case of Bakshi Ghulam Mohammad was that the arrest was mala fide. On the other side, it was said that since about July 1964 various allegations of abuse of power by Bakshi Ghulam Mohammad some of which formed the subject matter of inquiry, had come to the notice of the Government and thereupon investigations were started by the Criminal Investigation Department at the instance of the Government. In order to stop the investigation Bakshi Ghulam Mohammad and his followers started rowdyism and other form of breaches of law and order endangering public safety and maintenance of public order. It was pointed out that the situation in Kashmir had not been easy for some time past due to the hostile intentions of Pakistan and China and breach of law and order added to the seriousness of the position. It was said that for these reasons Bakshi Ghulam Mohammad had to be arrested and detained under the Defence of India Rules. It was said on behalf of Bakshi Ghulam Mohammad that prior to the arrest, a no confidence motion had been sponsored and had actually gathered in volume and the arrest was made to stultify it. What support the no confidence motion had we do not know. It would appear however that the Criminal investigation Department had been making inquiries against Bakshi Ghulam Mohammad's acts for some time past and the situation in Kashmir was inflammable. In those circumstances, it cannot be said that Bakshi Ghulam Mohammad's arrest was mala fide. He was no doubt released from arrest after a petition had been moved for his release and before the petition was heard. It was said that he was released because the Government found that the petition was bound to succeed. We have no material before us on which we can say that the petition was bound to succeed. On behalf of G. M. Sadiq and D. P. Dhar it was said that he was released because of ill-health. This does not appear to have been denied. It was also said on behalf of G. M. Sadiq that the investigation having been completed there was no cause for Bakshi Ghulam Mohammad to instigate breaches of law and order and therefore it was not necessary to keep him in detention any longer. On the evidence before us, we are unable to say that the case made by G. M. Sadiq cannot be

accepted. As to the prorogation of the Assembly, it is said by the appellants that it was necessary because it was apprehended that if the Assembly met, there might have been trouble inside the House created by Bakshi Ghulam Mohammad's followers who resented the arrest. On the materials before us, we are unable to say that this apprehension was pretended. It was also said by the appellants that the prorogation had been decided upon before the arrest of Bakshi Ghulam Mohammad but the order could not be passed because of Sadar-i-Riyasat was out of Srinagar from before September 15, 1964 when both the arrest and prorogation had been decided upon and did not return there till some time on September 21, 1964. The fact that the Sadar-i-Riyasat returned on that date is not denied. As we have said, the arrest and the prorogation took place on the next day, that is, September 22, 1964. Bakshi Ghulam Mohammad was released on December 15, 1964 and the Notification challenged was issued on January 30, 1965. On these facts, we are unable to hold that Bakshi Ghulam Mohammad has been able to establish that the inquiry had been set up mala fide owing to political rivalry.

It has been said on behalf of the appellants that there could be no political rivalry because, as appears from Bakshi Ghulam Mohammad's own affidavit, he had declared his intention to retire from politics. On behalf of Bakshi Ghulam Mohammad it was stated that G. M. Sadiq had made a Statement that he would be released after a Commission of Inquiry was set up and this would show that the detention was mala fide and that would indicate that the Notification had also been issued mala fide. The statement is not before us. On behalf of G. M. Sadiq it was said that such a statement had not been made and what had been said was that he would be released after the completion of investigation by the Criminal Investigation Department as thereafter, there will be no occasion for Bakshi Ghulam Mohammad to disturb the public peace and safety. It was also said that it had been mentioned that after the completion of the investigation, the Commission of Inquiry would be set up. This is not denied. It however does not make the arrest mala fide. It was further said by Bakshi Ghulam Mohammad that the statement showed that the Commission was set up to prevent him from disturbing public safety and law and order and that, therefore, it was outside the scope of the Inquiry Act. This was denied on behalf of G. M. Sadiq. In the absence of the statement, it is impossible for us to say which is the correct version. Another point taken was that the affidavits filed on behalf of the appellants showed that the Government were satisfied about the correctness of the allegations into which the inquiry was directed. It was contended that since the inquiry is for finding facts, if the Government were already satisfied about them, there was no need for further inquiry. This contention has no force at all. What the affidavit really said was that the Government were prima facie satisfied. They had to be so before they could honestly set up the Commission to make the inquiry. It was said on behalf of G. M. Sadiq that before setting up the Commission the Government had investigated into the facts through the Criminal Investigation Department and if the Government's intention was mala fide, they could have started criminal proceedings and ruined the political life of Bakshi Ghulam Mohammad just as well thereby and kept him busy and out of politics for a long time. It was pointed out that this might have resulted in serious consequences for Bakshi Ghulam Mohammad which the Commission of Inquiry would not. It was also pointed out that the Commissioner appointed was a retired Judge of the Supreme Court of India. All this, it was said, would indicate that the action had not been prompted by malice. We cannot say that these contentions of the appellants have no force.

The next ground of attack on the Notification was based on Art. 14. It was said that most of the matters into which the Commission had been directed to inquire formed the subject matters of Cabinet decisions. It was pointed out that since such matters are confidential and no one is allowed to divulge in what way the members of the Cabinet voted on them, it must be held that they were all equally responsible for the acts sanctioned. That being so, it was contended that by picking Bakshi

Ghulam Mohammad out of the entire Cabinet for the purpose of the Inquiry the Government had discriminated against him in a hostile way. It was contended that the Notification must be set aside on that ground. We find this contention untenable. The inquiry is in respect of wealth acquired by Bakshi Ghulam Mohammad and his friends and relatives by misuse of his official position. It would be strange if all the members of the Cabinet voluntarily abused their office for putting money into the pockets of Bakshi Ghulam Mohammad and his friends. Let us, however, assume that all the members of the Cabinet assisted Bakshi Ghulam Mohammad in doing this. It is however not said that other members had acquired wealth by these acts. He was, therefore, in a class by himself. This classification has further a rational connection with the setting up of the Commission, for the object is to find out whether the wealth had been acquired by Bakshi Ghulam Mohammad by the abuse of official position.

It remains now to deal with the last point. This was directed against the proceedings of the Commission. It was said that the proceedings had been conducted in a manner contrary to the rule of natural justice an to statutory provisions. Two specific complaints were made. The first was that the Commission had not allowed Bakshi Ghulam Mohammad to inspect all the documents before he was called upon to answer the allegations made against him. The second was that the Commission had refused him permission to cross-examine persons who had filed/affidavits supporting the allegations made against him. We have now to set out the procedure followed by the Commission. It first called upon the Government to file affidavits in support of the allegations in the second schedule to the Notification and to produce the documents which supported them. It then asked Bakshi Ghulam Mohammad to file his affidavit in answer. Thereafter the Commission decided whether any prima facie case had been made for Bakshi Ghulam Mohammad to meet and in that process rejected some of the allegations. Bakshi Ghulam Mohammad was told that there was no case which he had to meet in respect of them. Out of the remaining allegations, a group was selected for final consideration and it was decided that the rest would be taken up gradually thereafter. In connection with that group of cases, counsel for Bakshi Ghulam Mohammad wanted to cross-examine all the persons who had filed affidavits supporting the Government's allegations in the cases included in that group. The Commissioner ordered that he would not give permission to cross-examine all the deponents of affidavits but would decide each case separately. It was after this that the petition for the writ was presented.

The question of inspection is no longer a live question. It is true that when Bakshi Ghulam Mohammad was directed to file his affidavits he had not been given inspection of all the documents and files which the Government proposed to use to support their case. On behalf of Bakshi Ghulam Mohammad it was said that this was a denial of the rules of natural justice. It is not necessary to consider this question because it is admitted that since then inspection of the entire lot of files and documents has been given. At the final hearing of the allegations, therefore, Bakshi Ghulam Mohammad would no longer be at any disadvantage.

The next point is as to the right of cross-examination. This claim was first based on the rules of natural justice. It was said that these rules require that Bakshi Ghulam Mohammad should have been given a right to cross-examine all those persons who had sworn affidavits supporting the allegations against him. We are not aware of any such rule of natural justice. No authority has been cited in support of it. Our attention was drawn to Meenglas Tea Estates v. Their Workmen [[1964] 2 S.C.R. 165], but there all that was said was that when evidence is given viva voce against a person he must have the opportunity to hear it and to put the witnesses questions in cross-examination. That is not our case. Furthermore, in Meenglas Tea Estate case [[1964] 2 S.C.R. 165] the Court was not dealing with a fact finding body as we are. Rules of natural justice require that a party against whom an

allegation is being inquired into should be given a hearing. Bakshi Ghulam Mohammad was certainly given that. It was said that the right to the hearing included a right to cross-examine. We are unable to agree that that is so. The right must depend upon the circumstances of each case and must also depend on the statute under which the allegations are being inquired into. This Court has held in Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam [[1958] S.C.R. 1240] that "the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravended, should be decided not under any pre-conceived notions, but in the light of the statutory rules and provisions." We have to remember that we are dealing with a statute which permits a Commission of Inquiry to be set up for fact-finding purposes. The report of the Commission has no force proprio vigore. This aspect of the matter is important in deciding the rules of natural justice reasonably applicable in the proceedings of the Commission of Inquiry under the Act. Then we find that s. 10 to which we have earlier referred, gives a right to be heard but only a restricted right of cross-examination. The latter right is confined only to the witnesses called to depose against the person demanding the right. So that Act did not contemplate a right of hearing to include a right to cross-examine. It will be natural to think that the statute did not intend that in other cases a party appearing before the Commission should have any further right of cross-examination. We, therefore, think that no case has been made out by Bakshi Ghulam Mohammad that the rules of natural justice require that he should have a right to cross-examine all the persons who had sworn affidavits supporting the allegations made against him.

We will now deal with the claim to the right to cross-examine based on statutory provision. That claim is based on s. 4(c) of the Act. The relevant part of the section is as follows :-

> "The Commission shall have the power of a Civil Court, while trying a suit under the Code of Civil Procedure Svt. 1977, in respect of the following matters, namely :-
>
> (a) summoning and ao enforce the attendance yof an person and examining him on oath;
>
> #(b) . . . . .##
>
> (c) receiving evidence on affidavits."

It is not in dispute that the Code of Civil Procedure of Jammu and Kashmir State referred to in this section is in the same terms as the Indian Code of Civil Procedure. Order 19 r. 1 of the Indian Code reads as follows :-

> "Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the bearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit."

The contention is that the powers of the Commission therefore to order a fact to be proved by affidavit are subject to the proviso that that power cannot be exercised when a party desires the production of the persons swearing the affidavits for cross-examining them.

The contention was accepted by the High Court. We take a different view of the matter. We first observe that the inquiry before the Commission is a fact-finding inquiry. Then we note that s. 10 which, in our opinion, applies to a person whose conduct comes up for inquiry by the Commission directly, has a right to cross-examine only those persons who give viva voce evidence before the Commission against him. If s. 4(c) conferred a right to cross-examine every one who swore an affidavit as to the facts involved in the inquiry, then s. 10(2) would become superfluous. An interpretation producing such a result cannot be right. It also seems to us that O. 19 r. 1 has to be read with O. 18 r. 4 which states that the evidence of the witnesses in attendance shall be taken orally in open court. It would appear, therefore, that O. 19 r. 1 is intended as a sort of exception to the provisions contained in O. 18 r. 4. The Act contains no provision similar to O. 18 r. 4. Therefore, when s. 4(c) of the Act gave the Commission the power of receiving evidence on affidavits, it gave that as an independent power and not by way of an exception to the general rule of taking evidence viva voce in open court. It would be natural in such circumstances to think that what the Act gave was only the power to take evidence by affidavit and did not intend it to be subject to the proviso contained in O. 19 r. 1. If it were not so, then the result really would be to require all evidence before the Commission to be given orally in open court. If that was intended, it would have been expressly provided for in the Act. We should here refer to Khandesh Spinning etc. Co. Ltd. v. Rashtriya Girni Kamgar Sangh [[1960] 2 S.C.R. 841] where this Court dealing with a somewhat similar section like s. 4(c) observed that facts might be proved by an affidavit subject to O. 19 r. (1). The observations appear to have been obiter dicta. In any case that case was dealing with a statute different from the one before us. The observation there made cannot be of much assistance in interpreting the Jammu and Kashmir Inquiry Act. The number of witnesses swearing affidavits on the said of the Government may often be very large. In fact, in this case the number of witnesses swearing affidavits on the side of the Government is, it appears, in the region of four hundred. The statute could not have intended that all of them had to be examined in open court and subjected to cross-examination, for then, the proceedings of the Commission would be interminable. We feel no doubt that the Act contemplated a quick disposal of the business before the Commission, for, otherwise, the object behind it might have been defeated. While on this topic, we would impress upon the Commission the desirability of speedy disposal of the inquiry. For these reasons, in our view, s. 4(c) of the Act does not confer a right on a party appearing before the Commission to require a witness giving evidence by an affidavit to be produced for his cross-examination. The Commission would, of course, permit cross-examination in a case where it thinks that necessary. The view that we take should not put any party in any difficulty. He can always file affidavits of his own denying the allegations made in affidavits filed on behalf of the other party. If the evidence on both sides is tendered by affidavits, no one should be at any special disadvantage. We have also to remember that s. 9 of the Act gives the Commission power to regulate its own procedure subject to any rules made under the Act. We find that the rules provide that evidence may be given by affidavits and the Commission may after reading it, if it finds it necessary to do so, record the evidence of the deponents of the affidavits and also of others; see rr. 6, 7 and 8. Rule 10 reproduces the restricted right of cross-examination given by s. 10. Rule 11 says that in all matters not provided by the rules, the Commission may decide its own procedure. One of the matters covered by the rules in cross-examination of witnesses. So the rules contemplate cross-examination as a matter of procedure and the Commission is free to decide what cross-examination it will allow provided that in doing so it cannot go behind the rules relating to cross-examination. Section 9 of the Act has to be read in the light of these rules. All this, we think, supports the interpretation we have put on s. 4(c). We also feel that the procedure before a body like the Commission has necessarily to be flexible. We, therefore, reject the last contention.

In our view, for these reasons, the judgment of the High Court cannot be supported. We accordingly set it aside. The appeal is allowed.

Appeal allowed.

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