CALCUTTA HIGH COURT

New Central Jute Mills Co. Ltd

Vs.

Deputy Secretary, Ministry of Finance

Matter No. 272 of 1964

(B.N. Banerjee, J.)

04.08.1965

ORDER

B.N. Banerjee, J.

1. The Indian Companies Act 1913, which was extensively amended in 1956 and thereafter further amended from time to time, called for a drastic revision after the end of World War II.

> "Apart from the experience gained in the actual working of the Act, which threw up many points necessitating its amendment, large changes had taken place in the organization and working of joint stock companies and over a wide sector that was dominated by new elements, in trade and industry, the character of Company management had also materially altered. In many cases conventional methods of Company management were discarded in favour of less orthodox and more venture-some technique which the existing Company law was unable to control adequately".

(Report of the Company Law Committee 1952, P 3). The lacunae in the Act left the way open to some businessmen misuse and at times to pervert the provisions of the law to serve their private ends.

2. So long as the second World War lasted, the pun of war economy on domestic production masked these mal-practices but the end of the war exposed them to the full view of an increasingly critical public. Thus arose the demand for amendment of the Indian Companies Act particularly on the following aspects : -

> '(i) the manner in which companies were promoted and formed with particular reference to the law about prospectuses, minimum subscription and allotment of shares;
> (ii) the nature and scope of the control exercised by shareholders on the management of a company;
> (iii) the powers and functions of directors and the control exercised by them over the

companies and their managing agents;

(iv) the terms of appointment and conditions of service of managing agents and their powers and functions vis-a-vis the directors of a company and the general body of shareholders;

(v) the powers of investigation and inspection conferred on Government in cases of gross mismanagement of the affairs of a company;

(vi) the manner in which company accounts were kept and audited;

(vii) the position of minority shareholders and the protection to be accorded to them;

(viii) the rights of shareholders and creditors in winding up;

(ix) the administration of the Indian Companies Act, including the need for an authoritative body to keep a close and continuous watch on investment markets."

(Report of the Company Law Committee, 1952 p. 20).

Emphasizing on the necessity for adequate provision for inspection and investigation the Company Law Committee observed : -

> "No law, however well conceived or well drafted, can be altogether fool-and-knave proof and it is impossible for any law to protect the tool from the consequences of his acts or Omissions. Nevertheless, we consider that it is the function of law to prevent dishonest and unscrupulous people from creating conditions and circumstances, which will enable them to make fools of others. The powers of inspection and investigation into the affairs of a company, which the Companies Acts of most countries confer on Government or a quasi-independent authority are intended primarily as a check on the activities of such people. We recognize that, in some cases, the use or the powers of inspection and investigation may, initially, tend to shake the credit of a company and thereby adversely affect its competitive position, although the allegations against the company may in me and be found to have been largely unfounded. It is, therefore, necessary that the investigation provisions of the Act should be so conceived as to reduce this threat to the credit of companies to a minimum. This risk should not, however, deter us from considering the desirability of conferring adequate powers on an appropriate authority to investigate the affairs of a company, where such investigation is prima facie called for. On the contrary, we consider it to be in the long-term interest of the trade and industry of this country that such powers should be vested in a competent authority and exercised energetically, albeit with due caution and fairness in all cases which require investigation". (Report of the Company Law Committee, 1952 P. 133).

3. The demand for drastic revision was sought to be met by enacting the Companies Act 1956, winch came into operation from April 1, 1956. The new Act has also been several times amended, during the first decade of its operation, so as to plug the holes and escape routes, as and when those came to notice. Section 209(A) of the new Act contains provisions for inspection and Sections 235 to 251 contain provisions for investigation.

4. I have referred to the historical background necessitating the enactment of the Companies Act,

1956 at some length, because the present state of things is the consequence of the past and it is natural to inquire as to the sources of the good that we enjoy or evils we suffer.
5. With this preface, I now turn to relate the circumstances in which this Rule was issued. The petitioner company, New Central Jute Mills Co. Ltd. feels aggrieved by an order of investigation of its affairs and also by the manner in which the same is being conducted and has moved this Court for relief.

6. The petitioner company claims to be a prosperous concern with a paid up share capital of Rs. 2,89,00,000 and further claims to own two Jute Mills, the two largest single units in the industry, known as Albion Jute Mill and Lothian Jute Mills and one chemical and fertilizer factory known as Sahu Chemicals and Fertilizers. According to the petitioner, the affairs of the company are being run on sound principles; resulting in substantial profits, declaration of good dividends and provision for sufficient reserve and expansion. Further, according to the petitioner, the directorate of the company includes persons of business reputation and two members of the Indian Administrative Service, one of them of the rank of a Secretary to the Government of Uttar Pradesh. The above facts are pleaded in order to emphasize upon the contention that the petitioner company should have been treated as beyond reproach. The measure put by the petitioner company upon itself is, however, not an agreed measurement.

7. On April 11, 1963, the department of Company Law Administration of me Government of India made the following order against the petitioner company :

> "Whereas the Central Government is of the opinion that there are circumstances suggesting that the business of New Central Jute Mills Ltd., a Company having its Registered office at 11, Clive Row, Calcutta (hereinafter referred to as the said Company) is being conducted with intent to defraud its creditors, members or other persons and the persons concerned in the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the said company or its members;

And whereas the Central Government consider it desirable that an Inspector should be appointed to investigate the affairs of the said Company and to report thereon; Now therefore in exercise of the several powers conferred by sub-clauses (i) and (ii) of clause (b) of Section 237 of the Companies Act, 1956 (Act I of 1956) the Central Government hereby appoint Sri S. Prakash Chopra of M/s. S.P. Chopra and Co., Chartered Accountants, 31-F, Connaught Place New Delhi, as Inspector to investigate the affairs of the said company for the period from 1-4-58 to date and should the Inspector so consider it necessary, also for the period prior to 1-4-58 and to report thereon to the Central Government pointing out, inter alia, irregularities and contraventions in respect of the provisions of the Companies Act 1956 or of the Indian Companies Act, 1913, or of any other law for the time being in force and person or persons who are responsible for such irregularities and contraventions. The Inspector shall complete the investigation and submit six copies of his final report to the Central Government not later than four months from the date of issue of this order unless time in that behalf is extended by the Central Government. A separate order will issue with regard to the remuneration and other incidental expenses of the Inspector."
On receipt of the order, the petitioner company wrote to the respondent Deputy Secretary, on June 12, 1963, objecting to the investigation, inter alia, on the grounds that the order was

unwarranted and without jurisdiction and made on consideration of extraneous circumstances. By the said letter, the petitioner company also requested the respondent Deputy Secretary to furnish itself with materials on the basis of which the order had purportedly been made. The respondent Deputy Secretary replied to the letter, on June 17, 1963, repudiating the allegations and regretting inability to disclose the materials.

8. Without prejudice to its objections hereinbefore referred to, the petitioner company alleges to, have given all facilities and assistance to S.P. Chopra in making the investigation, namely, by making books and papers available to him whenever he wanted, by supplying to him such statements as he required and by producing its officers and employees for personal examination by him.

9. S.P. Chopra could not complete the investigation within the period originally fixed and the respondents bad to extend the time for completion of the investigation and submission of the report upto October 31, 1963, by an order dated August 9, 1963.

10. During the investigation, there was an order under Section 209(4) of the Companies Act, dated September 6, 1963, made against the petitioner company, couched in the following language :

> "Whereas Shri I.M. Puri, an officer of the Government at present posted as Accounts Officer in the Department of Company Law Administration, has approached the Central Government for being authorized under Section 209(4) of the Companies Act 1956, to inspect the books of accounts of Messrs. New Central Jute Mills Company Limited, 11, Clive Row, Calcutta;

And whereas after perusal of the material forwarded by the said Shri I.M. Puri, upon the basis of which he has formed the opinion that sufficient cause exists for such an inspection, the Central Government is satisfied that such an inspection is desirable;

Now therefore, in exercise of the powers vested in it by Sub-Section (4) of Section 209 of the Companies Act, 1956, the Central Government hereby authorizes the said Shri I.M. Puri, to inspect the books and accounts of the said New Central Jute Mills Company Limited, wherever kept." Regard being had to the circumstances in which, the order was made, petitioner chose to characterize the order as mala fide, wrongful, illegal and made without jurisdiction. The petitioner sent its objections to the Secretary, Company Law Administration, on October 28, 1963, when I.M. Puri wanted to proceed under the order and therein, inter alia, stated :

> "(a) that I.M. Puri, not being an officer authorized "in this behalf" within the meaning of the proviso to Section 209(4) of the Companies Act, was not expected to form the necessary Opinion and to approach the Government for being authorized to inspect the books of the petitioner Company, on the pretence of existence of sufficient reasons;
> (b) that regard being had to the nature of I.M. Puri's employment in the Small Industries Services Institute, it was not possible for him to form the necessary opinion;
> (c) that during the course of an investigation under Section 237, there cannot be further sufficient cause for inspection of books under Section 209(4) of the Companies Act."

11. The respondent Deputy Secretary replied to the letter on November 6, 1963, repudiating the

contentions made by the petitioner company and asking the petitioner company to comply with the order or to face the consequence.

12. While this type of correspondence was going on, the extension of time given to S.P. Chopra to complete the investigation and submit his report expired and the respondents were obliged to give him a second extension of time upto January 31, 1964, by an order dated October 31, 1963. Even during this extended period, S.P. Chopra did not make any headway excepting that he wanted to utilise I.M. Puri as his deputy for the purposes, inter alia, of checking the statements supplied by the petitioner company with its books and records. This attempt merely produced bulky correspondence about the scope of deputizing permissible for Mr. Puri. Time for completion of the investigation and report had therefore to be extended for the third time, upto June 30, 1964, by an order dated January 29, 1964. This extended time was also uselessly consumed.

13. With the object of speeding up the investigation, begun as far back as April 11, 1963, the respondents thought of appointing an additional Inspector along with S.P. Chopra and, on June 12, 1964, made the following order :

> "Whereas vide Central Government's order of even number dated the 11th April 1963, an investigation was ordered into the affairs of New Central Jute Mills Limited Calcutta and Shri S. Prakash Chopra of M/s. S.P. Chopra and Co., Chartered Accountants, 31F, Connaught Place, New Delhi, appointed as Inspector for the purpose;

And whereas the date for completion of the said investigation and for submission of the report by the said Inspector was last extended up to the 30th June, 1964, by order of even number dated the 29th January, 1964; And whereas it is felt that for the efficient conduct of the investigation, it is necessary to appoint an additional Inspector; Now, therefore, in exercise of the power conferred by sub-clauses (i) and (ii) of clause (b) of Section 237 of the Companies Act, 1956 (Act I of 1956), the Central Government hereby appoint Shri I.M. Puri, an Accounts Officer in the Company Law Board as Co-Inspector with co-extensive powers which may be exercised by Him severally or jointly with the other Inspector. The two Co-Inspectors shall complete me investigation and submit six copies of their report to the Central Government by 30th June, 1964, or by such date as may be extended from time to time, if and when found necessary." The petitioner condemned this order as illegally made in abuse of power and declined to submit thereto. The result was that attempts by I.M. Puri, who was exhibiting some energy in the matter of inspecting or further inspecting some documents, railed to make any progress and petered away in acrimonious correspondence.

14. When the period fixed for Chopra-Puri combination, to make their report was due to expire, the respondents relieved S.P. Chopra from his duties, al his own request and made the following order on June 30, 1964 :

> "Whereas vide Central Government's orders of even number dated the 11th April 1963 and 12th June, 1964, respectively Sarvshri S. Prakash Chopra and I.M. Puri were appointed as specters to investigate into the affairs of New Central Jute Mills Limited;

And whereas the date for completion of the said investigation and for submission of the report by the said Inspectors was last fixed as 30th June, 1964; And whereas it has been represented to the Central Government that due to the refusal of the Company and its officers to produce all books and other papers or to appear before the Inspectors for the purpose of examination and other non-co-operative and dilatory tactics, it would not be possible for them to complete the Investigation and submit their report by the aforesaid date; And whereas Shri S. Prakash Chopra, Inspector, has regretted his inability to continue any longer with this appointment due to his other professional engagements;

And whereas after consideration of the aforesaid circumstances and also the magnitude of the work involved, the Central Government are of the opinion that certain modifications additions in the orders already issued are necessary; Now therefore, in exercise of the powers conferred by sub-clauses (i) and (ii) of clause (b) of Section 237 of the Companies Act, 1956 (Act I of 1956) the Central Government hereby appoint Shri S.C. Bafna, an Accounts Officer in the Company Law Board, as Co-Inspector with Shri I.M. Puri, in place of Shri S. Prakash Chopra. The two Inspectors shall have co-extensive powers which may be exercised by them severally or jointly. The Inspectors shall complete the investigation and submit six copies of their report to the Central Government by 31st December. 1964." The petitioner condemned this order also as illegal, mala fide and made without jurisdiction and asked the respondents to recall the order. Not being able to induce the respondents to do so, the petitioner company moved this Court, tinder Article 226 of the Constitution, praying for a Writ of Certiorari for the quashing of the order dated April 11, 1963 and the several extensions thereof and also of the orders dated September 6, 1963, June 12, 1961 and June 30, 1964, for a Writ of Mandamus directing the respondents to recall or rescind the said orders and for a Writ of Prohibition restraining the respondents from taking further steps in the Impugned proceedings. The petitioner company obtained this Rule, on July 21, 1964.

15. Mr. R.C. Deb, learned Advocate for the petitioner, argued this case in very great detail and raised several contentions in support of the Rule. The impugned order, dated April 11, 1963, was made under Section 237 of the Companies Act of which the material portion is set out below;

> "Without prejudice to its power under Section 235, the Central Government-(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct,
> (i) * * *
> (ii) * * *
> (b) may do so if, in the opinion of the Central Government, there are circumstances suggesting -
> (i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose;
> (ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or”

16. Mr. Deb contended that before taking action under Section 237(b), the Central Government must form "the opinion" that there were "circumstances suggesting the necessity for taking such action. This opinion, Mr. Deb contended, must be objectively formed by the appropriate authority, in a *bona fide* manner. In support of this proposition, Mr. Deb relied on a judgment of the House of Lords in *Ridge v. Baldwin*[1], in which Lord Reid reviewed the case law and condemned the dictum in *Nakbidali v. Jayaratne*[2], in the following language (at p. 79) :

> "The authority chiefly relied on by the Court of Appeal in holding that the watch committee were not bound to observe (he principles of natural justice was (1951) AC 66. In that case the Controller of Textiles in Ceylon made an order cancelling the appellant's license to act as a dealer and the appellant sought to have that order quashed. The Controller acted under a defense regulation which empowered him to cancel a license "where the controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer." The Privy Council regarded that as (at p. 77) "imposing a condition that there must in fact exist such reasonable grounds known to the controller before he can validly exercise the power of cancellation.' But according to their judgment certiorari did not lie and no other means was suggested whereby the appellant or anyone else in his position could obtain redress even if the controller acted without a shred of evidence. It is quite true that the judgment went on, admittedly unnecessarily, to find that the controller had reasonable grounds and did observe the principles of natural justice, but the result would have been just the same if he had not. This House is not bound by decision of the Privy Council and for my own part nothing short of a decision of this House directly in point would induce me to accept the position that, although an enactment expressly requires an official to have reasonable grounds for his decision, our law is so defective that a subject cannot bring up such a decision for review however seriously he may be affected and however obvious it may be that the Official acted in breach of his statutory obligation."

He relied further on a opinion by the Privy Council in *Ross Clunis v. Papadopoullos*[3], in which Regulation 3 of the Emergency Powers Order in Council, 1939, empowering a Commissioner at Cyprus with the approval of the Governor, to impose collective fine on the inhabitants, if he had reasons to believe that inhabitants of an area were guilty of misdemeanour mentioned in the order, came up for consideration. In that case, Lord Morton of Henryton observed (at p. 33) :

> " * if it could be shown that there were no grounds on which the appellant could be satisfied, a court might infer either that he did not honestly form that view or that in forming it, he could not apply his mind to the relevant facts."

He also relied upon *King Emperor v. Sibnath Banerjee*[4], in which the

[1](1963) 2 All England Reporter 66
[2](1951) AC 66
[3](1958) 2 All England Reporter 23
[4]72 Ind App 241

Privy Council had to consider the extent of the power of the Central Government or of the Provincial Government to direct detention of a person, under Rule 26 of the Defense of India Rules, 1940, if it was satisfied that so to do was necessary for preventing such a person from

acting in any manner prejudicial to the defense of British India etc. Lord Thankerton, in delivering the opinion of the Board, observed that the order of detention was ex facie regular and the burden was on the respondents to displace the presumption; that burden having been discharged in the case of two of the respondents, the "Routine Orders" under which the Home Minister had directed that on receipt of the report of arrest together with the recommendation by the police for detention under Rule 26 of the Defense of India Rules, orders for detention were to issue as a matter of course must be condemned as void, inasmuch as that direction effected a substitution of the satisfaction of the police in place of the satisfaction of the Governor. Lastly, he relied on a decision of the House of Lords in *Roberts v. Hopwood*[5], in which explaining the meaning of *bona fide* exercise of statutory power. Lord Simmer observed (at pp. 603-04).

> "*Bona fide* here cannot simply mean that they are not making a profit out of their office or acting in it from private spite nor is *bona fide* a short way of saying that the council has acted within the ambit of its powers and therefore not contrary to law. It must mean that they are giving their minds to the comprehension and their wills to the discharge of their duty towards that public, whose money and local business they administer."

The substance of his argument on this point is that where an Act left an action dependent upon the opinion of the administration, by some such expression as "is satisfied" or "is of the opinion" or "if it has reason to believe" or "if it considered necessary," the opinion of the administrative authority is conclusive, (a) if the procedure prescribed by the Act for formation of the opinion was duly followed, (b) if the authority acted *bona fide*, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed. Mr. Deb invited my attention to certain observations made by the Court in the following cases, namely, *In re Banwarilal Roy*[6], *Tirthalal De v. State of West Bengal*[7], *Swapan Ray Chaudhuri v. Khagendra Nath Sen,*[8] and also by the Bombay High Court in *Malyali v. Commr. of Police*[9], at pp. 203-04 in support of this branch of his contention.

17. The proposition that opinion should be objectively formed, as contended for by Mr. Deb, is unexceptionable, if the opinion to be formed is of the types referred to in the cases relied upon by him, for example, opinion as to necessity of imposition of collective tine, opinion as to necessity for detention or opinion as to requirement of land for the purpose of acquisition under the Laud Acquisition Act. The opinion to be formed under Section 237(b) of the Companies Act is, however, not that type of opinion. That mind of the authority, when it makes an order under clause (b) of Section 237, is at an exploratory stage and that is the reason why it has to proceed on "circumstances suggesting" the existence of malpractices mentioned in sub-clauses (i), (ii) and (iii). The expression "if in the opinion of the Central Government there are circumstances suggesting" means that if

[5] 1925 AC 578 [7] 66 Cal WN 115 at p. 118 [9] AIR 1950 Bom 202
[6] 48 Cal WN 766 at pp. 781-82 [8] 66 Cal WN 220 at p. 227: AIR 1962 Cal 520 at p. 524

it appears to the Central Government that there is a likelihood of (language used in Section 4 of the Land Acquisition Act). Times, if the Central Government is to proceed on "circumstances suggesting", it can merely proceed on hypothesis, that is to say, on a prima facie theory to be proved or disproved with reference to facts, later on ascertained. Now, if the character of the investigation is merely that of a "fact finding commission", as pointed out by the Supreme Court

in *Raja Narayan Lal Bansilal v. Manick Phiroz Mistry*[10], at p. 19 the Central Government cannot be expected to Form a fully objective opinion about the malpractices mentioned in sub-clauses (i), (ii) and (iii), before the investigation brings out relevant materials for the formation of such an opinion. It may merely form the opinion that there are circumstances, which may be capable of innocent interpretation but until so done, suggestively sinister. This is a form of opinion which is lesser in degree than the self-confident opinion based on reasonable materials, commonly known as objective opinion but is certainly greater in degree than the speculative view, which goes by the name of subjective satisfaction. The Government may proceed under Section. 237(b) only if there are "circumstances suggesting" the existence of malpractices envisaged in sub-clauses (i), (ii) and (iii) of clause (b). In other words, the Central Government must proceed reasonably and must not be actuated by bad faith or dishonesty, must exclude from consideration matters which are irrelevant and must act according to law and not humour. When I say that the Central Government must proceed reasonably, I intend to say what was said by Lord Greene M.R. in *Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation*[11] at p. 683 :

> "Counsel in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense, not that it is what the Court considers unreasonable, but that it is what the Court considers is a decision that no reasonable body could have come to, which is a different thing altogether."

18. Mr. Deb kept his arguments within bounds indicated by Lord Greene M.R. and contended that in making the order under Section 237 (b) of the Companies Act, the Central Government proceeded in a palpably unreasonable manner. He read paragraphs 4 to 7 of the petition, indicating the financial stability of the company, paragraph 8 of the petition indicating the business integrity of the directorate, which included two Government Directors, paragraphs 13, 14 and 15 of the petition asserting absence of complaint from creditors, members and other persons and contended that the position of the company was such that there could not have been even any suspicion against it in the mind of a reasonable person. He further contended that paragraphs 3, 4, 5, 6, 11, 12 and 13 of the affidavit-in-opposition, affirmed by the respondent Deputy Secretary, denying or disputing the above mentioned paragraphs of the petition were vague and indefinite in nature and suffered from the infirmity that the office records on which the statements were allegedly based were not disclose. He also contended that paragraph 11 of the said affidavit-in-opposition contained in admission to the effect that the Central Government was merely making a roving enquiry in order to fish for materials and had nothing in its possession, which justified an investigation under Section 237(b). The passage in paragraph 11 of the affidavit-in-opposition, on which he particularly relied, reads as follows:

[10] AIR 1961 SC 29

[11] (1947) 2 All England Reporter 680

> "It is submitted that it is only after the investigation which is now in progress is completed that the true manner in which the business of the petitioner is being conducted, whether with intent to defraud its members, creditors or other persons or not will be revealed. I have no knowledge as to whether and do not admit that the directors representing the U.P. Government would or did take part effectively in the management of the affairs of the petitioner."

Mr. Deb rounded up this branch of his contention with the criticism that the Central Government did not act reasonably, had no reasonable ground to take steps against the petitioner company under Section 237(b) and was actuated by malice in law in milking the impugned order. I am glad to notice that Mr. Deb did not, in his wisdom, allege malice in fact against the respondents, which would have been difficult for me to decide in a Writ petition, but merely alleged malice in law. which denotes absence of legal excuse.

19. I agree with the criticism by Mr. Deb to this extent that the affidavit-in-opposition is mostly uninformative. According to the affidavit-in-opposition there are materials in the official records suggesting the existence of malpractices as in sub-clauses (i) and (ii) of clause (b) of Section 237. The respondents do not claim privilege in respect of such materials. Nothing was easier for the respondents than to plead or disclose some of the materials in justification of the action taken. In Writ matters affidavits are the only pieces of evidence which are before the Court. If such affidavits are vague and uninformative or merely make general allegations devoid of particulars, their value becomes negligible.
20. In paragraph 9 of the affidavit-in-opposition, it is stated :

> "I say that the Central Government on proper and sufficient grounds formed its opinion and *bona fide* made the order dated April 11, 1963. I submit that the opinion of the Central Govt. is not justiciable. I submit further that it is further necessary nor proper that the said order of 11th April, 1963 should on the face of it disclose the nature or contents of the materials on the basis of which the Central Government formed its opinion."

An order of the Central Government under Section 237 (h) is certainly not Justifiable, if the order has been made by the appropriate authority *bona fide* and reasonably, even though the reasons may not fully appeal to a Court of law. It may not also be necessary for the Central Government to recite its reasoning's when making an order under Section 237(b). But when the exercise of the power is challenged as actuated by malice in law, before a Court of law, justification for the exercise of the power must not be blanketed from the Court. I need, however, observe, in this context, that Mr. S. Choudhuri, learned Advocate for the respondents, was ready will the records, so that I could dispel my own doubts, but expressed his disinclination to give inspection of the same to the petitioner company. I did not think it proper to take into consideration materials, of which the petitioner knew nothing, so as to enable myself to come to a decision.

21. If the affidavit-in-opposition had been completely uninformative, I am not sure if I could wholly ignore the criticism of Mr. Deb. The affidavit-opposition, however, is not as bad as that. In paragraph 4 of the affidavit-in-opposition it is stated :

> "Further for the greater part of the period under investigation, Messrs. N.C. Jain and Co., a firm of Chartered Accountants were the statutory auditors of the petitioner. In the same period, members of such firm were also acting as employees in some of the other concerns belonging to or controlled by Shanti Prasad Jain and/or members of his family who also control and manage the petitioner. In the premises, it is contended that the statutory auditors of the petitioner were not at material times independent and at no material time there has been a just audit of the petitioner's affairs." It appears from the

Annual Reports of the petitioner Company for the years 1955 to 1962-63 (all annexed to the petition) that Sahu Jain Ltd. is and has been the Managing Agent of the petitioner company. It is not disputed that Shanti Prosad Jain is the Chairman of the Board of Directors of Sahu Jain Ltd. The Central Government appears to entertain the opinion that there are circumstances suggesting that members of the firm of N.C. Jain and Co., Statutory auditors to the petitioner company, are employed in other concerns belonging to or controlled by Shanti Prosad Jain. Now, the value of an audit report depends upon the independence and integrity of the auditors. If it appears that auditors are under some sort of obligation to the company, the accounts of which they audit, there may arise a doubt that the auditors might have discharged their functions much too indulgently. If such a doubt arises, it cannot be ignored as a doubt which no reasonable man should entertain. In the affidavit-in-reply the petitioner no doubt denies that any member or members of the firm of auditors were employed as alleged. I am not in a position to decide which version is correct. Be that as it may, paragraph 4 of the affidavit-in-opposition makes one definite allegation against the petitioner company and the nature of the allegation is not such as does not make a reasonable man inquisitive. The petitioner company controls very large capital contributed by the public. Its liabilities by way of loan and otherwise are also considerable. If it does not do its business honestly and properly, the repercussions on the economics of the country may be pretty severe. If in the opinion of the Central Government there are circumstances suggesting that the petitioner company has been employing an obliging firm of auditors, which may cover up its malpractices, it cannot be said that the Government did not act reasonably in taking action under Section 237(b) or must have proceeded on a fundamental misconception of the law and the matter in regard to which the opinion was to be formed.

22. My attention was drawn in this context to an English decision *In Re : Miles Aircraft Ltd*[12]*.,* In that case, dealing with a motion by the Board of Trade, under Section 43(i) of the Companies Act, 1947, that an order be made declaring that the affairs of the aircraft company should be investigated by an Inspector appointed by the Board of Trade, Roxburgh, J. proceeded on the basis that :

"he would have considered he ought to accede to the application even if it had been opposed by the company. In fact it was not opposed. Nevertheless, he conceived it to be his duty under Section 43 to satisfy himself that a prima facie case has arisen for investigation by the Board of Trade. It had been submitted that there was such a. case on two grounds : the second being the recommendation of a

[12](1948) W. N. 178

dividend of 7½ per cent only two months before the Company's loss was discovered. On that ground he was satisfied that a prima facie case had been made out."

The decision was cited in order to induce me to see for myself, as Roxburgh, J. did, whether there existed in fact circumstances suggesting the desirability of an investigation under Section

237(b). The case does not help the petitioner. The affidavit-in-opposition, in the instant case, is not wholly uninformative. There is at least one definite allegation therein contained, namely, that the petitioner Company may have been employing an obliging auditor. This is a prima facie ground, without more, for formation of the opinion that the affairs of the Company need be investigated. On that ground alone I am satisfied that a prima facie case suggesting the necessity of investigation has been made out.

23. I need notice, at this stage, that it is not the argument of Mr. Deb that the impugned order of April 11, 1963 suffers from any other infirmity excepting that the Central Government was actuated by malice in law. There is no procedure prescribed for formation of the opinion excepting that the Central Government need proceed only on the basis of reasonable hypothesis or suggestive circumstances. The order was made by the appropriate authority - "By and in the name of the President of India" - and the opinion was also formed by the Central Government. The order cannot be characterised as not *bona fide* made, because apart from allegations of malice in law there is no allegation of malice in fact. The materials disclosed in paragraph 4 of the affidavit-in-opposition are circumstances, which may suggest to a reasonable man the necessity of a probe into the affairs of the petitioner company. I have therefore to overrule the first branch of the contentions urged by Mr. Deb.

24. Mr. Deb next contended that the nondisclosure of the materials or circumstances on which the opinion was allegedly formed was fatal to the order, dated April 11, 1963. In support of this contention, he relied upon a decision by a Division Bench of this Court in *Daulatram Rawatmull v. Income-tax Officer*[13] - unreported. In that case an income-tax assessee complained, inter alia, that existence of the condition precedent to the exercise of jurisdiction under Section 34(1A) of the Indian Income-tax Act 1922 for the re-opening of his assessment was lacking and the exercise of the jurisdiction was as such bad. In that context Bose, C.J. observed :

> "It may he pointed out, however, that where the assessee seeks investigation by the Court as to the existence of the condition precedent to the exercise of jurisdiction under Section 34 (1A) of the Indian Income-tax Act and comes before the Court with a properly framed petition for that purpose, the Court will in appropriate cases compel the Income-tax Officer who entertained the belief contemplated in Section 34(1A) to place before the Court and before the assessee all the materials which prompted the Income-tax Officer to proceed under Section 34 (1A) of the Act and to determine the question whether such conditions precedent do in fact exist or not."

The observation quoted, above does not establish the extreme contention of Mr. Deb. The non-disclosure of the grounds for formation of opinion does not invalidate the proceeding taken but, in appropriate cases, disclosure of the grounds may be ordered. In the instant

[13] A.F.D.O. No. 209 of 1959 (Cal)

case, there is no prayer for disclosure of the circumstances suggesting action under Section 237(b) of the Companies Act, and, therefore, the point does not concern me. Then again, even if I had directed disclosure, the respondents could only disclose circumstances, which suggested to themselves that an investigation should take place. Now, circumstances which suggest something to one may not suggest the same thing to another. Therefore, if the circumstances disclosed had the remotest relevancy, I could not ignore them, even though they did not appeal to myself and decide whether in those circumstances an investigation should take place or not. Only if the

circumstances had been wholly irrelevant, even suggestively, I could pronounce my views. Such a disclosure in all probability would have been of doubtful utility to the petitioner company, unless of course it could go to the difficult length of showing that the circumstances were of no relevancy at all. I have already noticed one relevant circumstance which may be used in justification of the order. For the reasons given above, I do not make much of this argument.

25. Mr. Deb thirdly contended that the order of investigation dated April 11, 1963, as made, was not warranted by Section 237(b) because : -

(a) the mariner of investigation was not specified;
(b) the investigation was not limited to sub-clauses (i) and (ii) of Section 237 (b) but was made inclusive inter alia, of contravention of any other law for the time being in force;
(c) the investigation was directed to embrace the period from after April 1, 1958 but that notwithstanding, the decision to conduct investigation in respect of the period prior to April 1, 1958 was left to the personal discretion of the Inspector;

(A) there was a time limit fixed for completion of the investigation and submission of the final report but at the same time power to extend the time was unlawfully assumed. I am unable to uphold the contentions for reasons hereinafter stated seriatim :

(a) under Section 237(b), which no doubt attracts the provisions in Section 237(a), it is not obligatory on the part of the Central Government to prescribe the manner in which the report by the Inspector is to be made. The word "may" in Section 237(a) merely confers a liberty upon the Central Government to describe the manner in which the report is to be made our. This is so, because the Central Government may require report of a particular type in a particular case and may call upon the Inspector to produce one. The non-specification of the manner in which to report is not fatal to the appointment of an Inspector;
(b) Sub-clause (1) of Clause (b) of Section 237 may require investigation as to whether the business of a company is being conducted "for a fraudulent or unlawful purpose". This is wide enough to include contravention of any law for the time being in force. Mr. Deb argued that such a liberal interpretation of the word unlawful would entitle the Central Government to launch an investigation even if a company had failed to renew car licences in contravention of the Motor Vehicles Act. I do not find force in this argument. If it appears that a transportation company owning a large fleet of car has been attempting to thrive by unlawful savings on motor vehicle taxes or licence fees, there is no reason why such an investigation should not take place. In my opinion, law makes the investigation comprehensive of all sorts of illegalities and the language employed in the impugned order is not wider than the law itself;
(c) the liberty given to the Inspector to decide upon the necessity of carrying on his investigation even prior to April 1, 1958 does not suffer from the infirmity of excessive delegation of power. The Central Government directed an investigation in 1963 and was of the prima facie opinion that a probe into past five years would suffice but nevertheless

was not oblivious to the theory that the root of the trouble might lie buried deeper in the past and any unyielding delimitation of the period of investigation would not succeed in getting at the root. The Central Government therefore fixed April 1, 1958 as the starting point with liberty to Inspector to proceed backward and forward in order fully to discover what he was asked to report upon;

(d) the law does not fix a time limit for reporting. The Central Government administratively fixed a time limit of four months but at the same time reserved the liberty to extend the time. If the Central Government can fix a time limit, it may also unfix the limit and refix or extend the time. The failure on the part of an Inspector to submit the report within the time administratively fixed certainly amounts to breach of duty on his part but the investigation does not lapse because of such breach and the authority which had ordered the investigation may condone the expiry of time and further extend the time for making the report. For the reasons given, I do not think that the order dated April 11, 1963, as made as unwarranted by Section 237(b).

26. The fourth argument of Mr. Deb was that an investigation under Section 237(b) was impressed with quasi-judicial character and must conform to the minimum requirements of judicial procedure. Those requirements, according to Mr. Deb, inter alia, are that the Inspector or Inspectors first appointed must himself or together themselves complete the investigation and submit the report and that this duty and responsibility must not be shared with another, must not be delegated to another, during the investigation and others must not be allowed to come in as successor or successors to the Inspector or Inspectors first appointed. These minimum requirements were not, according to Mr. Deb, observed when I.M. Puri was appointed Co-Inspector along with S.P. Chopra or when S.C. Bafna was allowed to succeed S.P. Chopra as Co-Inspector with I.M. Puri. Alternatively, Mr. Deb argued that even if an investigation under Section 237(b) of the Companies Act be administrative in character, the Inspector was obliged to proceed judicially, which was made impossible, in the instant case, by addition of Co-Inspectors or by succession of Inspectors. Further in the alternative, Mr. Deb contended that the scheme of the Act was such that nobody may be made to share the duties and responsibilities of the Inspector or Inspectors first appointed or to inherit the same.

27. I take up for consideration the first branch of the argument of Mr. Deb. on this point, first of all, Is an investigation under Section 237(b) of the Companies Act impressed with judicial or quasi judicial character ? In my opinion the answer must be in the negative. Mr. Chaudhuri, learned Advocate for the respondents, invited my attention to Hearts of *Oak Assurance Co. Ltd. v. Attorney General*[14], in which the House of Lords, had to deal with the character of an investigation under Section 17 of the Industrial Assurance Act, 1923, which authorizes the Industrial Assurance Commissioner or any Inspector

[14]1932 AC 392

appointed by him to examine and report on the affairs of any collecting society or industrial assurance company, if "in the opinion of the Commissioner there is reasonable cause to believe that an offence against this Act (meaning Industrial Assurance Act 1923) or the Friendly Societies Act, 1896 or the Assurance Companies Act 1909, has been or is likely to be committed." The purpose of the enquiry is to obtain information or a report and thereon to decide whether the Commissioner should take steps (including steps for winding up) in respect of the

offending body. Lord Thankerton, in that case, said (at p. 396) :

> "It appears to me to be clear that the object of the examination is merely to recover information as to the Company's affairs and that is in no sense a judicial proceeding for the trial of an offence;"

Section 17 of the Industrial Assurance Act is of the same species as Section 237 of the Companies Act and there is no reason why the character of investigation under Section 237 should be taken to be of a different type or character. The Supreme Court approved of the observations of Lord Thankerton in Hearts of Oak Assurance Co., 1932 AC 392 (supra) in the case, AIR 1961 Supreme Court 29. Dealing with an investigation under the Companies Act, Gajendragadkar, J. (as the Chief Justice then was) observed (at p. 39) :

> "It is well known that the provisions of the Act are modelled on the corresponding provisions of the English Companies Act. It would therefore, lie useful to refer to the observations made by the House of Lords in describing the character of the enquiry held under the corresponding provisions of the English Act in the case of 1932 A C 392."

His Lordship thereafter quoted passages from She decision of the House of Lords and further observed (at p. 40) :

> "Thus it is clear that the examination of, on investigation into the affairs of the company cannot be treated as a proceeding started against any individual after framing an accusation against him."

I need notice in passing that the Madras High Court also expressed the view that the duties of an Inspector under Section 237 of the Companies Act were not quasi judicial in their nature, in the case of *Comibatore Spinning and Weaving Go. Ltd. v. M.S. Srinivasan*[15]. Similar is the view expressed by Lord Esher in Re. Grosvenor and West End Rly. Terminus Hotel Co., (1897) 76 L. T. 337, while interpreting Sections 56 and 59 of the English Companies Act, 1862, largely in pari materia with the provisions of Section 237 of our Companies Act. This being the position in law, I have to overrule this branch of the contention of Mr. Deb and need not consider the authorities cited by him dealing with the academic question as to the intrinsic characteristics of Judicial proceedings, for example, R. v. Manchester Legal Aid Committee, (1952) 1 All, ER 480, *Cooper v. Wilson*[16], and the unreported decision of the Supreme v Court in Civil Appeal No. 62 of 1964, (Since reported in AIR 1966 Supreme Court 81), *Dwaraka Nath v. Income-tax Officer*, (per Subba Rao, J.).

[15] AIR 1959 Mad 229

[16](1937) 2 KB v. 309

28. I now take up for consideration the second branch of the argument of Mr. Deb on this point. Was there a duty cast upon the Inspector, an administrative authority, to act judicially ? In support of the proposition Mr. Deb drew my attention, in the first place, to the 'observations' of Parker, J., in (1952) 1 All England Reporter 480 (at p. 490) :

> "Though the local committees may be said to be administrative bodies in the sense that

> they are responsible for administering the Legal Aid and Advice Act, they are quite unconcerned : with the questions of policy. They cannot refuse legal aid because the fund is becoming depleted or because they think that certain forms of action should be discouraged. They have to decide the matter solely on the acts of the particular case, solely on the evidence before them and apart from any extraneous considerations. In other words, they must act judicially, not judiciously."

He next relied on the following observations by the Supreme Court in *Board of High School and Intermediate Education U.P., Allahabad v. Ghanshyam Das Gupta*[17], at p.1113 :

> "Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duly to act judicially or not. The inference whether the authority acting under a statute, where it is silent has the duty to act judicially will depend on the express provisions of the Statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion, if any, to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise to widely different circumstances, which it will be impossible and indeed inadvisable to attempt to define exhaustively."

Mr. Deb contended that there were enough indicia afforded by the Companies Act that in discharge of his duties under Section 237(b), even if administrative in nature, an Inspector was required to act judicially. He drew my attention to [he following provisions of the Companies Act, namely ;

> (i) Section 240 which entitles the Inspector to compel production of document, to examine witness on oath and also have them examined through parts of law;

(in Section 240A which entitles the Inspector to effect seizure of document, by following the prescribed procedure, and

> (iii) Section 241 read with Section 246 which makes the Inspector's report admissible in evidence.

and contended that the manner of investigation was such that it closely approximated judicial procedure. He further drew my attention to Section 239 which empowered the

[17] AIR 1962 SC 1110

Inspector to carry on investigation, if necessary, even into the affairs of related companies or of the managing agents or of associates of the company under investigation and contended that the provisions indicated the comprehensively objective nature of the report to be made by the Inspector. He also drew my attention to

(i) Section 242 which entitles the Central Government to prosecute a delinquent company.
(ii) Section 243, which entitled the Central Government to apply for the winding up of a delinquent company, and
(iii) Section 244 which entitles the Central Government to bring proceedings for recovery of damages from a delinquent company, if the Inspector, in his report, Buds the company guilty of the malpractices mentioned in sub-clauses (i), (ii) and (iii) of Section 237(b) and contended that a report might have severe adverse effect on a company subjected to investigation. He lastly invited my attention to
(i) Section 241(2)(e) which entitles the Central Government to publish the report and
(ii) Section 245, which entitles the Central Government to saddle a delinquent company with expenses of investigation, in certain circumstances,

and contended that the investigation report, if adverse was likely to affect the reputation and proprietary rights of the company under investigation. Hounding tip his argument Mr. Deb submitted that the nature of the work to be performed by the Inspector and its effect satisfied the measure laid down by the Supreme Court, in the case of Board of High School AIR 1962 Supreme Court 1110 (supra), for determination of the judicial character of the work.

29. Mr. Chaudhuri, learned Advocate few the respondents, did not dispute the broad proposition that an administrative authority may be, in certain circumstances, required to act judicially. He, however, contended that it was so, if the authority had to determine questions affecting the rights of citizens, on consideration of proposal and objection. In support of his contention be relied upon the summing of the law by Atkin, LJ. in *Rex v. Electricity Commrs*[18]. at p. 205, which I quote below :

> "Wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

He further relied upon the approval of the Lord Atkin's summary by the Supreme Court in *Province of Bombay v. Kusaldas S. Advani*[19] and also read to me the following passage from the judgment of Scrutton, L.J. in *Rex v. London County Council*[20], at p. 233 :

> "It is not necessary that it should be a Court in the sense in which this Court is a Court; it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition."

[18](1924) 1 KB 171 [20](1931) 2 KB 215
[19](1950) SCR 621 (at p. 668) : (AIR 1950 SC 222 at p. 239)

In my opinion, Mr. Chaudhuri is right in his submission. The Inspector, decides nothing. He merely probes into the affairs of a company and embodies in the report his opinion. The document is admissible in evidence only as a piece of opinion. The opinion, by itself does not affect the rights of the company. The opinion need not be accepted by the Central Government and steps taken against the company, unless the Central Government also forms the same

opinion. The duty of an Inspector is to collect facts and on such facts to form an opinion about the affairs of a company. He does not write a judgment which binds the company vide *Ramiah Nadar v. Amirtharaj*[21], The company, against which an adverse opinion is formed. may always condemn the opinion as a mad (bad?) opinion. if further steps be sought to be taken by the Central Government against the company on the basis of such opinion. In the case of Coimbatore Spinning and Weaving Mills, AIR 1959 Madras 229 (supra) the Madras High Court equated the functions of the Inspector as analogous to the functions of an Inspector of Police who goes out to investigate a crime and the powers conferred upon an Inspector appointed under Section 237 of the Companies Act to search, seize and examine witnesses were equaled with facilities for investigation enjoyed by an Inspector of Police under the Code of Criminal Procedure. In my opinion the analogy is not far-fetched. The Supreme Court in the case of Raja Narayanlal Bansilal, AIR 1961 Supreme Court 29 (supra) described the function of an Inspector under the Companies Act as equivalent to the functions of a tact-finding commission. Such a commission merely enquires and reports, without accusation and without calling upon anybody to prove or disprove anything. In making such an administrative enquiry the Inspector need not proceed judicially and unless, there be, express or implied prohibition in the statute, there may be Co-Inspectors appointed or the investigation may be carried on by a successor to the Inspector first appointed.

30. I have now to see whether there is anything in the scheme of the Act which indicates that the Inspector or Inspectors, who was or were first appointed, must complete the investigation and send the report or whether this duty may be shared or succeeded to. In this context, Mr. Deli drew my attention to Section 238 of the Companies Act and emphasized upon the point that Inspector or Inspectors must be an individual or individuals, indicating thereby a personal element in the matter of investigation. He took me through Sections 239, 240, 240A, 241 and 246 of the Act and submitted the law indicated continuity of action by the Inspector or Inspectors, first appointed and further submitted that if the duty of the Inspector or body of Inspectors was to form an opinion, the formation of such opinion could not be delegated to or shared with a co-worker or successor. In support of the last proposition, Mr. Deb relied upon the following case : (i) *Vine v. National Dock Labour Board*[22], in which Lord Somervell observed that disciplinary power, whether judicial or not, cannot be delegated, (ii) *Taraprasanna v. Union of India*[23], which followed 1956-3 All England Reporter 488 (supra). There are two reasons for which I am unable to uphold this argument. In the first place, the nature of work to be done by the Inspector is not such as cannot be partly delegated or shared or left to a successor. An Inspector is not a disciplinary authority, as in the two cases referred to by Mr. Deb, nor even an authority competent to give a judgment. Then again, the scheme of the Act, according to me, indicates that the fact finding commission may be carried on by "any Inspector" appointed under Section 237 not necessarily by the Inspector or Inspectors, who was or were first appointed. The opinion formed by the

[21] AIR 1962 Mad 163 [23]61 Cal WN 849

[22](1956) 3 All England Reporter 939

Inspector and incorporated in the report is merely an opinion and may be utilized by the Central Government for its own information. The report has not the characteristic of a judgment and does not operate to the prejudice of the company reported against of its own force. To such a report, the principle enunciated in, 1956-3 All England Reporter 939 (supra) does not apply. I, therefore, overrule me fourth argument advanced by Mr. Deb.

31. Before I take up for consideration the next point urged by Mr. Deb, I need refer to another aspect of the same argument. Mr. Deb contended that S.P. Chopra was entitled to take the help of assistants in his work but could not wholly leave the work to another, as he wanted to do when, on November, 26, 1963, he sent I.M. Puri, as his deputy, to check the statements supplied by the petitioner company with the books of account and records of the company. Mr. Deb invited any attention to a letter, dated January 2, 1964 (at page 27 of the annexures to the petition) and contended that the tenor of the letter, read with list of works included in the attached list, indicated that in garb of taking ministerial assistance, Mr. Chopra wanted to leave the work of investigation generally to I.M. Puri. I feel that this grievance: is not wholly unfounded. It is beyond doubt that an Inspector may take the help of ministerial assistants within reasonable limits. This is also the view expressed in the case of *In re Goumont-British Picture Corporation Ltd*[24]. But ministerial assistance must have its limits; it may include assistance taken from accounts clerks and other clerks, typists, stenographers and the like, who may work under the direction, control and supervision of the Inspector but must not include unspecified general work to be performed at the discretion or the ministerial assistants. This point is now of academic importance, because I.M. Puri has now been upgraded as a Co-Inspector. I have dealt with the point so as to indicate that if, in future, clerical assistance need be taken, such assistance must be kept within clerical limits.

32. I now take up for consideration the fifth point urged by Mr. Deb, to the effect that during the continuance of an investigation under Section 237, an order for inspection of the books of account, under the proviso to Sub-Section (4) of Section 209, should not have been made. Now, the different powers conferred on different authorities under the Companies Act have different objects. Section 209 deals with accounts and requires a Company to keep different books, giving a true and fair view of the state of affairs of the company, at the registered office of the company, or at the branch office or offices. Power is invested in the Registrar of Companies or any officer authorised in this behalf to inspect the books, in order to see that the books are being kept and properly kept. There is further power in the Registrar, under Section 234, to call for information in respect of documents submitted to him under the Act or representation made to him by contributeries. creditors and others. There is also the power of investigation under Section 237. The powers over-lap at times but their objects are different. There is nothing to indicate that a power under the proviso to Section 209(4) must not be exercised during investigation under Section 237, even if exercise of such power becomes necessary. I am, however, prepared to agree with Mr. Deb that, in the circumstances of the case, the exercise of this power was unnecessary because such an inspection was possible to make during investigation and this order might have been made out of exasperation at the failure of Mr. Chopra to make any headway in the investigation. But even then there arises no question of want of jurisdiction to make such an order.

[24](1940) 1 Ch 506

33. I have now to consider the last point of Mr. Deb. That point was not taken in the petition and was not urged during the hearing of this Rule. When Mr. Deb was engaged in arguing the third of the three cases, which wore heard one after another, (namely, *Sahu Jain Ltd. v. Deputy Secretary Ministry of Finance*[25]), he discovered this point and wanted to argue the point as a point in all the three cases. Mr. Chaudburi, learned Advocate for the respondents, objected to the point being taken, in this Rule on the twofold ground, (i) there was no pleading nor any ground taken covering this point and (ii) (here was no demand for justice sent on this ground. He, however, indicated his preparedness to meet the point, if argued and did not want an adjournment of the

hearing of the Rule, because a new point was being catapulted upon him. I would not have allowed Mr. Deb to argue the point, as a point in this Rule, if Mr. Chaudhury had been inconvenienced. Since he is not, since the point is a jurisdictional point and since there are a good many common points in the three Rules heard one after another, of the request of the parties, I have decided to consider that point in this Rule.

34. The new point is this. By the Companies (Amendment) Act, 1963, which came into Force from January 1, 1964, Section 10E was incorporated in the Companies Act, 1956, which reads as follows : -

> "(1) As soon as may be after the commencement of the Companies (Amendment) Act, 1963, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration to exercise and discharge such powers and functions conferred on the Central Government by or under this Act or any other law as may be delegated to it by that Government.
> (2) The Company Law Board shall consist of such number of members, not exceeding five, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette.
> (3) One of the members shall be appointed by Central Government to be the Chairman of the Company Law Board.
> (4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.
> (5) The procedure of the Company Law Board shall be such as may be prescribed.
> (6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government."

The said Act also amended Sub-Sections (1) and (2) of Section 637 of the Companies Act 1956 and added new Sub-Section (2A). After amendment the Sub-Sections read as follows :-

> "(1) The Central Government may, by notification in the Official Gazette and subject to the conditions restrictions and limitations as may be specified therein, delegate -
> (a) any of its powers or functions under this Act (other than the power to appoint a person as public trustee under Section 1-53A and the power to make rules) to the Company Law Board;

[25] Matter No. 281 of 1964 (Cal)

> (b) any of its powers or functions under this Act, other than those specified in Sub-Section (2) to such other authority or such officer as may be specified in the notification.
> (2) The powers and functions which cannot he delegated under clause (b) of Sub-Section (1) are those conferred by or mentioned in the following provisions of this Act, namely, Sections * * 235, 237, 239, 241, 242, 243, 244, 245, 247, 248, 349, 250 * *.

(2A) The provisions of this Act shall apply in relation to the Company Law Board as they apply

in relation to the Central Government in respect of any matter in relation to which the powers and functions of the Central Government have been delegated to the Company Law Board." It is not disputed that shortly after the amendment there was a Company Law Board constituted, on February 1, 1964 and powers, inter alia, under Sections 235 to 250, in so far as capable of delegation were delegated to that body. Mr. Deb contended that after April 1964, the Central Govt. divested itself of its powers and duties under Sections 235 to 250 and therefore the appointment of I. M. Puri as Co-Inspector with S.P. Chopra (made on June 12, 1964) and the appointment of S.C. Bafna, in place of S.P. Chopra, to act as Co-Inspector with I.M. Puri (made on June 30, 1964) were all beyond the authority of the Central Government. According to Mr. Deb, where powers and duties are interconnected and it is not possible to separate one from the other, in such wise that powers may be delegated while duties are retained and vice versa, the delegation of powers takes with it the ditties. In support of this contention Mr. Deb relied on similar observations by the Privy Council, made in a different context, in *Mnngoni v. Attorney General of Northern Rhodesia*[26], which observations were approved by the Supreme Court in *Daulatram Pannalal Modi v. Assistant Commissioner of Sales Tax*[27], Mr. Deb is right in his contention that the duty to decide upon investigation and the power to direct investigation, under Section 237 of the Companies Act, are so much interconnected that one cannot be separated from the other and that the effect of the delegation by the Central Government to the Company Law Board has been delegation of both power and duty and that the consequence is that at present the Company Law Board alone may decide upon investigation and cause the same to be earned on. This is common sense. Further, according to Mr. Deb, the effect of such a complete delegation is divestiture of authority in the Central Government, because after delegation the Central Government had no reserve powers to act. In support of the last contention Mr. Deb relied on the observations by Scott, LJ in *Blackpool Corporation v. Looker*[28] This last contention of Mr. Deb was hotly contested by Mr. Chaudhuri. He contended that delegation was not equivalent to resignation by the executive. He generally relied upon *Huth v. Clarke*[29], (at p. 394 per Lord Coleridge. CJ.); *Gordon, Dadds and Co. v. Morris*[30], (at p. 621 per Lynskey, J) and particularly upon the Judgment of Denning LJ in *Metropolitan Borough and Town Clerk of Lewisham v. Roberts*[31], at p. 622, in which His Lordship did not agree with observations of Scott, LJ in Blackpool Corporation 1948-1 All England Reporter 85 (supra) and characterised the same as obiter.

35. In my opinion, the form in which this point has been raised is somewhat of academic importance in the context of this case. Whether the Central Govt. may now direct an

[26](1960) 1 All England Reporter 446 : 1960 AC 336
[27] AIR 1963 SC 1581
[28](1948) 1 All England Reporter 85
[29](1890) 25 QBD 391
[30](1945) 2 All England Reporter 616
[31](1949) 2 KB 608

investigation under Section 237, to the exclusion of the Company Law Board, is not a matter for my consideration. What I have to consider is the late of investigations, started at the instance of the Central Government, at a time when there was no Company Law Board. Do those investigations automatically come to an end ? Are those investigations to be deemed to have been begun by the Company Law Board, by some fiction of adoption and are they to be continued by the Board ? The Companies (Amendment) Act, 1963 does not supply an affirmative answer to the two questions. In my opinion, investigations validly started by the lawful authority, at a time when that authority had not parted with its powers and duties, do not become invalid proceedings merely because of a subsequent parting of power. Further, if such an investigation it to be continued, that must be done by the authority which started it. There may be

insuperable difficulties in effecting an adoption by the Company Law Board. An investigation under Section 237 is to be ordered by the authority which forms the necessary opinion. Under the scheme of the Companies Act, an investigation under Section 237 cannot be ordered by the Company Law Board on opinion formed not by itself but by the Central Government, which Government later on delegated its authority to the Board. On a parity of reasons, it cannot also continue an investigation, started by the Central Government, about the necessity of which it did not itself form an opinion. The question of adoption of an investigation, started by the Central Government, by the Company Law Board, being out of the way, it need be held that, by necessary implication, the Central Government retained its control over investigations ordered by itself, prior to delegation of authority to the Company Law Board.

36. Mr. Deb made a last desperate attempt to save his point with the contention that an Inspector appointed, prior to the delegation, may complete the investigation and submit his report but no new Inspector or Inspectors can be appointed by the Central Government, either as Co-Inspectors or as successor Inspector or Inspectors, after the delegation. Such appointment, according to him, would amount to invasion on the authority delegated. I do not think that this argument is well conceived. If the Central Government retains jurisdiction over investigations started by itself, as I hold it does, then that jurisdiction would include all the powers to bring the investigations to a successful termination, including power to add to the number of Inspectors or to appoint successors in case of vacancy. For the reasons stated above, I do not find any substance in this argument.

37. Although I have not been able to uphold the contentions of Mr. Deb, I feel, nevertheless, that the investigation so far carried on against the petitioner company left much to be desired. An investigation against a public company tends to shake its credit and adversely affects its competitive position in the business world, even though, in the end, it may be, completely exonerated and given a character certificate. Such an investigation may be Justified only as a necessary evil. As such, it must be carried out quickly and in such a manner as may reduce the threat to the credit of the company, to the minimum. Any investigation sought to be carried on oblivious of this aspect of the matter may tend to become unreasonably burdensome and may invite oppositionism. Then again, it must not be forgotten that during the time that an investigation is carried on, the company under investigation is not in the position of an accused and the persons in charge of the management of the company must not be treated as such. An Inspector who starts investigation, as if riding on a high horse, is likely to antagonize the management and forfeit their co-operation. Section 237 requires that "one or more competent persons" shall be appointed as Inspectors. This competency includes capacity and qualification as was in adroitness and subtlety for the particular work. Mere academic capacity or qualification for the work, without more, is likely to land an Inspector into difficulties, which might have been avoided. I am constrained to observe that from April 11, 1963 to June 12, 1964, during which period S.P. Chopra acted as the sole Inspector and thereafter from June 13, 1964 to June 30, 1964 during which S.P. Chopra acted along with a Co-Inspector, time and opportunity were wasted and no progress was made in the investigation. There is note by S.P. Chopra, annexed to the affidavit-in-opposition, explaining his difficulties and the reasons for the slow progress. That document is dismal reading. He admits that at the beginning of the investigation, the petitioner company showed signs of co-operation. He further admits that the petitioner company prepared statements, as required by him and submitted minute books, when called for by him. Thereafter, he himself created situations after situations by insisting upon signatures of the management on statements

supplied to him at his own request, by sitting over the minute books of the company, by refusing to return the original minute books, even after the petitioner company offered to supply certified copies of the books for his use, by deputing members of his staff to do "part of the work" on his behalf and the like. Antagonism thus generated degenerated into wordy battles, deliberate non-co-operation and complaints against each other, in course of which S.P. Chopra felt insulted and personally, insecure, for reasons best known to him. It appears to rue that the energy of both sides was dissipated in pettyfogging disputes and ultimately S.P. Chopra recommended "drastic action". Some drastric steps, by way of seizure of documents etc. have already been taken place but I need not advert to that, at this stage, because that is the subject-matter of another Rule, which is now pending. I do not know how the new Co-Inspectors, Puri-Bafna combination, will work and I can only hope that they will not commit the same mistake to which S.P. Chopra fell a victim. The powers with which Inspectors are invested, under the Companies Act, are very wide and if legal remedies were resorted to in proper time, much time and energy might have been saved. I have adverted to this aspect of the matter al some length, because although the respondents might have acted within their jurisdiction the carriage of the investigation has not been so far worthily done. I hope this criticism will not be wasted upon those, for whom it is meant.

38. Before I close this judgment, I need notice some minor points urged both by Mr. Deb and by Mr. Chaudhuri. This was done towards the close of argument, when regard being had to their nature, they should have urged at the beginning. Mr. Deb contended that paragraphs 4, 11, 12 and 13 of the affidavit-in-opposition were not properly affirmed, because sufficient particulars of the records, on which the statements were based, were not disclosed so as to identify them. This, he submitted, was opposed to the provision of R. 14 of the Writ Rules. If this objection had been taken at beginning, I might have directed reaffirmation of the affidavit but the objection was taken at too late a stage. This technical defect, however is not of a fatal character and much does not turn on it. Mr. Chaudhuri in his turn, contended that the affidavit of competency filed along with the petition was not of the proper type. This was however, rectified by Mr. Deb and a fresh affidavit of competency was filed. Mr. Chaudhuri also contended that application should have been made in the Appellate Side and not in the Original Side, under Rule 4 of the Writ Rules, because all the respondents do not reside or carry on business or have their offices situate within Ordinary Original Civil Jurisdiction of this Court. This may be a point, but the point should have been taken at the inception. After all, the application was duly labelled as made in the constitutional Writ Jurisdiction and heard by the Court authorized to hear such matiers. The defect pointed out by Mr. Chaudhuri is a remediable defect and should not entail dismissal of the application on that ground alone.

39. However, on oilier grounds hereinbefore stated, I discharge the Rule. I do not make any order as to costs. Interim orders, made in this Rule, shall continue for a fortnight and shall thereafter stand vacated.
Rule discharged.