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**(2006) 07 DEL CK 0188**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 9783 of 2006**

Andaleeb Sehgal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 07-07-2006

**Acts Referred:**

Commissions of Inquiry Act, 1952 — Section 11, 3, 8B, 8C  
Constitution of India, 1950 — Article 21

**Citation :** (2006) 130 DLT 748

**Hon'ble Judges :** T.S. Thakur, J;S.L. Bhayana, J

**Bench :** Division Bench

**Advocate :** Rajiv Sawhney and Vineet Jhanji, for the Appellant; M.P.P. Malhotra and Sanjeev Sachdeva, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

T.S. Thakur, J.—Admit.

2. Three precise questions fall for consideration in this writ petition. These are:

(i) Is the Constitution of a fact finding inquiry commission/authority legally permissible de-hors the provisions of the Commission of Inquiry Act, 1952?

(ii) Should resort to Section 11 of the Commission of Inquiry Act, 1952, necessarily result in the application of Sections 8B and 8C of the said Act to the proceedings before the Inquiry Authority/Commission?

(iii) Is the right to demand copies of the documents and affidavits, the right to be represented by a legal practitioner and the right to cross-examine the witnesses examined by the Commission available to a noticee independent of Section 8B and 8C of the Act aforementioned before an Inquiry Authority / Commission established otherwise than under the provisions of the said Act

3. Having heard Mr.Sawhney, learned Counsel for the petitioner and Mr.P.P. Malhotra, learned Additional Solicitor General, we are of the opinion that the first

of the three questions formulated above is concluded by two division bench decisions of this Court in P.R. Nayak Vs. Union of India and Others, and Brahma Nand Gupta Vs. Delhi Administration and Others, . In Nayak's case also the Government had by a resolution appointed a commission of inquiry to inquire into certain definite matters of public importance. By another notification issued u/s 11 of the Commission of Inquiry Act, certain provisions of the said Act were made applicable to the said commission. The question that arose for consideration was whether an inquiry commission could be appointed by the Government in exercise of the executive power vested in it. Answering the question in the affirmative, the Court observed:

It cannot be disputed that a Commission of Inquiry can be constituted de hors the Act in which case it will be an authority appointed in exercise of the executive powers of the Government and if such an authority has been or is set up under a resolution or order of the appropriate Government for the purpose of making inquiry into any definite matter of public importance, then upon the issue of a notification u/s 11 of the Act this authority is to be deemed to be a Commission appointed u/s 3 for the purposes of the Act. There is no question of such a resolution being bad for lack of authority which is liable to be quashed. The resolution is the expression given to the exercise of executive power by the Government in setting up such an authority which, by a fiction of law, is converted into a Commission appointed u/s 3 for the purpose of the Act. The issue of the notification u/s 11 of the Act would, Therefore, result in the Commission appointed initially by the resolution dated August 22, 1970 becoming a Commission under the Act.

4. The very same question then arose for consideration in Brahma Nand Gupta's case supra. Repelling the contention that a Commission of Inquiry was impermissible de-hors the provisions of the Act, the Court held:

The executive power of the Government is co-extensive with the legislative power. The executive power cannot be exercised in contravention of the provisions of any law. In the present case, the Commissions of Inquiry Act itself shows that the Government can set up an authority, other than a commission under the said Act, in respect of any definite matter of public importance.

5. We are in respectful agreement with the legal proposition stated in the above decisions. In our view, even when the field is covered by the provisions of a validly enacted law, the statute itself leaves it open to the Government to appoint an authority by whatever name called, for the purpose of making an inquiry into any definite matter of public importance. Section 11 of the Commission of Inquiry Act, 1952 is in this regard clear. It empowers the Government to extend to any such Authority all or such of the provisions of the Act as the Government may specify by a notification. We, Therefore, see no merit in the contention urged by Mr.Sawhney that the constitution of the Commission of Inquiry in the present case was itself incompetent. Our answer to question No.1 is accordingly in the affirmative.

6. Questions No. 2 and 3 formulated by us do not however admit of a similar straight answer, the decisions relied upon by learned Counsel for the parties in support of their respective cases notwithstanding. We say so because the said questions need to be examined from angles more than one for a satisfactory answer. We may briefly enumerate some of these aspects at this stage:

(i) The power of the Government to institute a commission of inquiry under the Commission of Inquiry Act, 1952 or to invoke its executive power for doing so is not regulated by any statutory provisions nor does the Act provide any guidelines for the exercise of the discretion vested in the Government. The result is that the Government can at its will establish a Commission of Inquiry under the Commission of Inquiry Act or simply invoke its executive power to do so.

(ii) If the Government decides to institute a commission of inquiry u/s 3 of the Commission of Inquiry Act, 1952, the Commission is u/s 8B of the said Act duty bound to afford to any person whose conduct it may inquire into or whose reputation is likely to be affected prejudicially, an opportunity of being heard in the matter and to produce evidence in his defense. This would include a right to cross-examine the witnesses examined by the Commission and the right to be represented by a legal practitioner. Section 8C of the Act is in this regard clear.

(iii) In an enquiry conducted by a Commission or Authority established under the general executive power of the Government, the rights available to persons likely to be prejudicially affected u/s 8B and 8C of the Act are not ipso facto exercisable by them. It is only if the Government extends those provisions to the commission that the persons likely to be affected may exercise such rights.

(iv) The right to reputation of an individual is now judicially recognised as a part of the right to life guaranteed under Article 21 of the Constitution. In *State of Bihar Vs. Lal Krishna Advani and Others*, , their Lordships declared the right to reputation as a facet of right to life. The Court observed:

Right to reputation is a facet of the right to life of a citizen under Article 21 of the Constitution. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review.

7. What needs to be examined is whether denial of an opportunity to defend ones reputation before a commission of Inquiry appointed in exercise of the executive power of the State can be justified on any legally tenable ground. This would in turn depend upon whether the recommendations made by a commission under the Commission of Inquiry Act are in any way different from those made by a commission appointed under the general executive power of the State. The recommendations made by both the Commissions are however simply

recommendatory upon which the Government may or may not take any action. The Commission, it is well settled, has no power to enforce its recommendations (see *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, ). The recommendations may nevertheless contain findings which adversely affect the reputation of an individual and thereby cause irreparable injury to him. In *L.K. Advani's case* (supra), their Lordships held that just because the Government had not initiated any action on the basis of the recommendations did not mean that the affected person cannot seek redress against the findings recorded by the Commission. The Court observed:

As far as the contention of the appellant State that the petition is premature because no action pursuant to the Report was initiated against him is concerned, it is not necessary for a person to wait till certain action is initiated by the Government, considering the report of the Inquiry Commission, where the observations made by the Commission are such which militate against the reputation of a person and particularly, without giving any chance to such a person to explain his conduct. It would be open for him to move the court for deletion of such remarks made against him violating the provisions of Section 8-B of the Act.

8. The court further held that the provisions of Section 8B of the Act were added nearly twenty years after the enactment of the law, because the legislature realized the necessity of hearing the persons likely to be affected by the findings of the Commission. Section 8B thus incorporated the principles of natural justice in the statute.

9. Questions No. 2 and 3 have to be examined and answered in the above backdrop. If reputation of an individual is a facet of his fundamental right to life under Article 21 of the Constitution, can an inquiry commission appointed by the Government prejudicially affect the said right, simply because the commission is appointed in exercise of the executive power of the State and not u/s 3 of the Commission of Inquiry Act Can the Government while extending to any such commission other provisions withhold the application of Section 8B and 8C of the Act, that guarantee compliance with the principles of natural justice and fairness to all those whose conduct is being enquired into or whose reputation is likely to be affected prejudicially? Should the right to address the commission, cross-examine witnesses and engage a lawyer be deemed to be implicit in any enquiry proceedings, especially when such enquiry is quasi judicial in nature? Need the persons whose conduct is being enquired into or those likely to be affected, wait till the commission concludes its proceedings and then challenge the findings on the ground that the same are violative of the principles of natural justice?, are matters that need to be examined and authoritatively answered. This can in our view be best done by a full bench of this Court keeping in view the importance of the questions that fall for determination.

10. We accordingly refer questions No. 2 and 3 set out in the beginning of this order to a full bench, to be constituted by Hon"ble the Acting Chief Justice. The

Registry is directed to place the papers before his Lordship for appropriate orders in that regard. CM No.7285/06 shall also stand referred for hearing and appropriate orders to the full bench. The respondents may, in the meantime, file their counter affidavits within two weeks. Rejoinder shall be filed by the petitioner within two weeks thereafter. The parties shall have the liberty to mention the matter before Hon''ble the Acting Chief Justice for an early hearing and disposal of the reference and the writ petition.