

(1965) 08 CAL CK 0004
In the Calcutta High Court
Case No : Matter No. 271 of 1964

Ashoka Marketing Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-08-1965

Acts Referred:

Companies Act, 1956 — Section 237, 249(1)

Citation : AIR 1967 Cal 159 : (1967) 37 CompCas 341 : 70 CWN 472

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : R.C. Deb, Subrata Roy Choudhary and Biswarup Gupta, for the Appellant; S. Choudary, B.N. Sen and B. Basak, for the Respondent

Judgement

B.N. Banerjee, J.—The petitioner-company claims to carry on business as exporter, investor and financier and further claims to have been acting as selling agent for the State Trading Corporation in respect of cement and also as sole selling agent or selling agent of several other companies. According to the petitioner-company, it has built up a very efficient and effective marketing organisation covering the whole of India. In paragraph 5 of the petition, there is a recitation of the commodities in which the petitioner-company trades, which includes cement, paper, fertilisers, plywood, bicycles, machinery, machine parts, motors and transformers, cables, tools, refractory materials and oil firing equipments. The petitioner-company has an issued and subscribed capital of Rs. 15,00,000 and claims to have built up a reserve of over Rs. 40,00,000. After having made provisions for taxation and reserves, the petitioner-company is said to have declared substantial dividends to its shareholders during the years 1958-59 to 1962-63. The directorate of the petitioner-company, it is said, includes businessmen of reputation and lawyers of respectability. The above facts are pleaded in order to emphasise upon the contention that the petitioner-company should have been regarded as beyond reproach. The measure put by the petitioner-company upon itself is not, however, an agreed measurement and is disputed in the affidavit-in-opposition.

2. On 11th April, 1963, the Central Government 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 Ashoka Marketing Company Limited, a company having its registered office at No. 18-A, Brabourne Road, 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 it has come to the notice of the Central Government that the said company is acting as the selling agent of M/s. Rohtas Industries Limited, Dalmianagar, Bihar, and New Central Jute Mills Co. Ltd., Calcutta, (hereinafter referred to as the said managed companies);

And whereas Sahu Jain Ltd., a company having its registered office at No. 11, Clive Row, Calcutta, is the managing agent (hereinafter referred to as the managing agent) of the said managed companies ;

And whereas a question (hereinafter referred to as the said question) has arisen as to whether Ashoka Marketing Limited is an "associate" as denned in Clauses (c) and (d) of Sub-section (3) of Section 2 of the Companies Act, 1956 (1 of 1956), of the managing agent ;

And whereas it appears to the Central Government that there is good reason to investigate the said question ;

And whereas the Central Government consider it desirable that an inspector should be appointed to investigate the affairs of the said company as well as to investigate the said question 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 (1 of 1956), and Clause (a) of Sub-section (1) of Section 249 of the said Act, the Central Government hereby appoint Shri S. Prakash Chopra of M/s. S. P. Chopra & Co., Chartered Accountants, 31-F, Connaught Place, New Delhi, as inspector to investigate the affairs of the said company, namely, Ashoka Marketing Company Ltd., for the period from 1st April, 1958, to date and also prior to 1st April, 1958, should the inspector consider necessary and to investigate the said question, namely, whether M/s. Ashoka Marketing Co. Ltd. is the associate of Sahu Jain Ltd., which is the managing agent of the said managed companies and report thereon to the Central Government pointing out, inter alia, all irregularities and contraventions in respect of the provisions of the Companies Act, 1913, or of any other law for the time being in force and the person or persons who are responsible for such irregularities and contraventions.

The inspector shall complete the investigation and submit six copies of his 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 be issued with regard to the remuneration and other incidental expenses of the inspector."

The aforesaid order, in so far as it is one under Clause (b) of Section 237 of the Companies Act, is characterised by the petitioner-company to be bad, illegal, without jurisdiction and mala fide in law on the same grounds as were urged against similar orders made against New Central Jute Mills Co. Ltd., [1966] 36 Comp, Cas. 512 dealt with by me in my judgment (Matter No. 272 of 1964). In so far as the order is one u/s 249(1)(a) of the Companies Act, the petitioner-company denies that it is an associate of Sahu Jain Ltd., and asserts that there is no reason even to suspect such association.

3. However, without prejudice to its contentions that the impugned investigation could not and should not have been ordered, it is said the petitioner-company decided to comply with the requisitions made by S.P. Chopra, the inspector. The petitioner-company alleges to have supplied to S.P. Chopra such statements and information as he wanted and ultimately on 17th May, 1963, the managing director of the petitioner wrote to him in the following language :

" This completes all information that you wanted by your letter..... dated 16th April, 1963. Except that certain information regarding the year 1958 and some very trivial information for the years 1959 and 1960 remain to be supplied. The same is being complied with and will be made available to you shortly. "

The information supplied apparently did not satisfy S.P. Chopra, who, according to the petitioner-company, was carrying on a roving enquiry and was fishing for information. He, therefore, asked for more and went on meeting the senior officers of the petitioner and gathering more information. Further, he obtained from the petitioner-company volumes of minutes books, and in spite of promise to return them quickly, sat over them until May, 1964. Also, he verbally examined the managing director, secretary, controller of accounts, another director of the name of N.R. Khaitan and also several other officers of the petitioner-company, without giving the least indication about the purpose of the enquiry.

4. The prolonged investigation notwithstanding, S.P. Chopra could not produce the report within the time fixed by the order, dated nth April, 1963. On 9th August, 1963, therefore, the Central Government made an order of extension of time as hereinbelow quoted :

"In continuation of the Central Government orders of even number dated the nth April, 1963, the Central Government hereby extends the time for the completion of the investigation and for submission of the report by the inspector appointed to investigate into the affairs of Ashoka Marketing Company Limited, a company having its registered office at No. 18-A, Brabourne Road, Calcutta, u/s 237(b) of the Companies Act, 1956 (1 of 1956), up to the 31st October, 1963."

According to the petitioner, there being no extension of time made in so far as the investigation was one u/s 249(1)(a) of the Companies Act, that investigation lapsed. I shall consider this point later on. This extended time, however, was not sufficient for S.P. Chopra to produce his report. On 31st October, 1963, the Central Government had to extend the time over again, purporting at the same time to revive the allegedly lapsed investigation u/s 249(1)(a). That order is set out below :

"In continuation of the Central Government orders of even number dated the 11th April, 1963, and the 9th August, 1963, respectively, the Central Government hereby extends the time for the completion of the investigation and for submission of the reports by the inspector appointed to investigate into the affairs of Ashoka Marketing Limited, a company having its registered office at No. 18-A, Brabourne Road, Calcutta, and also its associate ship with Sahu Jain Limited under Sections 237(b) and 249(1)(a) of the Companies Act, 1956 (1 of 1956), respectively, up to the 31st January, 1964."

The petitioner condemns this order as illegal and contends that a lapsed investigation u/s 249(1)(a) cannot be revived by a mere order of extension.

5. The second extension of time to complete the investigation was also uselessly consumed, except to the extent hereinafter indicated, and on 29th January, 1964, the Central Government granted further extension of time in the following language :

"In continuation of the Central Government orders of even number dated the 11th April, 1963, 9th August, 1963, and 31st October, 1963, respectively, the Central Government hereby extends the time for the completion of the investigation and for submission of the reports by the inspector appointed to investigate into the affairs of Ashoka Marketing Ltd., a company having its registered office at number 18-A, Brabourne Road, Calcutta, and also its associate ship with Sahu Jain Ltd. under Sections 237(B) and 249(1)(a) of the Companies Act, 1956 (1 of 1956), respectively, up to June, 1964."

6. During the continuance of the second extension of time, S.P. Chopra wrote to the petitioner-company the following letter, dated 26th November, 1963 :

" This is to inform you that I am deputing my assistant, Shri S.B. Gupta, who is also a Technical Assistant in Company Law Administration, Government of India, to check the statements supplied by you along with the books and records of the company. Kindly afford all assistance and facilities to him with a view to enabling him to perform his duties quickly.

In regard to my power to depute staff to do ministerial work, I have to draw your attention to the decision of Case No. 38 of 1963 by the High Court, Bombay, regarding interpretation of Section 240 of the Companies Act.

It is expected that Mr. Gupta will be reaching Calcutta by 2nd December, 1963."

7. By another letter, dated 4th December, 1963, S.P. Chopra further informed the petitioner-company that one I.M. Puri will be working with S.B. Gupta in the matter of checking. The said letter is quoted below :

"In continuation of my letter No. GG/4322 dated the 26th November, 1963, I have to inform you that I have instructed my assistant, Shri S.B. Gupta, who is also a Technical Assistant, Company Law Administration, Government of India, to check the statements supplied by you with the books and records of the company maintained at Calcutta and Sahupuri, Varanasi, along with Shri I.M. Puri about whom intimation has been sent earlier. I am sending a copy of this letter to Shri Gupta who is at present in Calcutta."

The petitioner-company took exception to the manner in which S.B. Gupta and I.M. Puri wanted to carry on their work and described the same as investigation by themselves, on their own, and not as deputies of Inspector Chopra. The company says that S.P. Chopra ignored the exception taken by the petitioner. The company further says that the purposeless investigation dragged on to the great harassment of the company and causing complete dislocation of the company's business.

8. Fourteen months after the investigation had started, the Central Government separated the investigation u/s 237(b)(i) and (ii) from the investigation u/s 249(1)(a) and extended the period of investigation by an order, dated 12th June, 1964, reading as hereinbelow set out:

"Whereas vide Central Government's order of even number dated the nth April, 1963, an investigation was ordered into the affairs of Ashoka Marketing Limited, Calcutta, and Shri S. Prakash Chopra of M/s S. P. Chopra & Co., Chartered Accountants, 31-F, Connaught Place, New Delhi, appointed as inspector for the purpose ;

And whereas the date for completion for 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 powers conferred by Sub-clauses (i) and (ii) of Clause (b) of Section 237 of the Companies Act, 1956 (1 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 the 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."

9. Three days thereafter, on 15th June, 1964, the Central Government made a similar order in respect of the investigation u/s 249(1)(a): "Whereas vide Central

Government's order of even number dated the nth April, 1963, Shri S.P. Prakash Chopra of M/s. S. P. Chopra & Co., Chartered Accountants, 31-F, Connaught Place, New Delhi, was appointed as inspector to investigate the question as to whether Ashoka Marketing Limited is an associate of its managing agents, viz., M/s. Sahu Jain Limited as denned in Clauses (c) and (d) of Sub-section (3) of Section 2 of the Companies Act, 1956 (1 of 1956);

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 additional inspectors :

Now, therefore, in exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 249 of the Companies Act, 1956 (1 of 1956), the Central Government hereby appoint Sarvashri I.M. Puri, Accounts Officer and S. B. Gupta, Technical Assistant in the Company Law Board, as co-inspectors with co-extensive powers which may be exercised by them severally or jointly with the other inspector. The three inspectors shall complete the investigation and submit six copies of the 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-company challenged the separation of functions and appointment of additional inspector and co-inspectors as illegal, without jurisdiction and characterised the same as wholly incongruous with the original order, dated 11th April, 1963, in so far as they called for two reports from two sets of inspectors in the place of one report from one inspector.

10. Shortly after their appointment, I.M. Puri and S.B. Gupta, it is alleged, began to chase the petitioner-company for inspection of books, refused prayers even for short adjournment and threatened action on the theory that the petitioner-company had refused production of books of account. The representations made by the petitioner-company to the Central Government against the attitude taken by I.M. Puri and S.B. Gupta elicited no reply. On the other hand, the Company Law Administration Department of the Central Government sent the following telegram, on 28th June, 1964, to the petitioner company :

"Inspectors report your refusal to produce books and papers stop violation Section 240 stop request production forthwith stop failing shall be obliged to proceed against you for persistent default in carrying out your obligations and functions under the law in such manner as advised stop confirm compliance stop shall consider your representation when reed, stop please bring contents this telegram all senior officers employees, agents, of your company."

11. Since the period of submission of report was about to expire, the Central Government made the following order, on 30th June, 1964, in respect of the investigation u/s 237(b):

"Whereas vide Central Government's orders of even number dated the nth April, 1963, and 12th June, 1964, respectively, Sarvashri S. Prakash Chopra and I.M. Puri were appointed as inspectors u/s 237(b) of the Companies Act, 1956 (1 of 1956), to investigate into the affairs of Ashoka Marketing Limited, Calcutta ;

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 it has also become necessary to relieve Shri I. M. Puri from this assignment on account of increase in his investigation work in other companies due to Shri Chopra's relinquishment of the office of inspector;

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 (1 of 1956), the Central Government hereby appoint in place of Sarvashri S. Prakash Chopra and I.M. Puri, Sarvashri S. Rajagoplan, a Senior Accounts Officer and S.B. Gupta, a Technical Assistant in the Company Law Board, as co-inspectors. 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."

12. On the same day, the Central Government made another order in respect of the investigation u/s 249(1)(a) to the following effect:

"Whereas vide Central Government's orders of even number dated nth April, 1963, and 15th June, 1964, receptively, Sarvashri S. Prakash Chopra, I.M. Puri and S.B. Gupta were appointed as inspectors to investigate the question as to whether Ashoka Marketing Limited is an associate of its managing agents, viz. M/ s. Sahu Jain Limited, as denned in Clauses (c) and (d) of Sub-section (3) of Section 2 of the Companies Act, 1956 (1 of 1956);

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 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 it has also become necessary to relieve Shri I.M. Puri from this assignment on account of increase in his investigation work in other companies due to Shri Chopra's relinquishment of the office of inspector ;

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 Clause (a) of Sub-section (1) of Section 249 of the Companies Act, 1956 (1 of 1956), the Central Government hereby appoint in place of Sarvashri S. Prakash Chopra and I.M. Puri, Shri P.B. Menon, a Registrar of Companies in the Company Law Board, to be a co-inspector with Shri S.B. Gupta. 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-company characterises these orders also as illegally made in abuse of power and meant to harass the petitioner-company without just cause.

13. In paragraph 56 of the petition, it is alleged that action u/s 240-A of the Companies Act, for seizure of documents, was illegally taken against the petitioner-company on 20th July, 1964, but with that I am not concerned in the present rule.

14. In this rule, the petitioner-company prays for the quashing of the order or orders for the two investigations, as extended from time to time and for a mandate upon the respondents restraining them from giving effect to the same.

15. Mr. R.C. Deb, learned advocate for the petitioner, urged in condemnation of the order for investigation u/s 237(b) (i) and (ii) the same grounds as he did in *New Central Jute Mills Co. Ltd. v. Deputy Secretary, Ministry of Finance*, [1966] 36 Comp. Cas. 512 and I overrule the grounds for the same reasons as I did in that case, excepting in so far as hereinafter indicated. I do not repeat my reasonings over again for the sake of brevity.

16. The affidavit-in-opposition, in the instant case, affirmed by respondent No. 3 is mostly uninformative, full of general denials, devoid of particulars and is unhelpful and unassisting in nature. I have already observed in *New Central Jute Mills Co. Ltd. v. Deputy Secretary, Ministry of Finance* :

"An order of the Central Government u/s 237(b) is certainly not justiciable, 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 reasonings when making an order u/s 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."

17. If the affidavit-in-opposition had been wholly uninformative, I do not think I could overrule the contention of Mr. Deb that the order for investigation u/s 237(b) was made without legal excuse. But the affidavit-in-opposition is not as bad as that in so far as the investigation u/s 237(b) is concerned. It appears from paragraph 5 of the affidavit-in-opposition as quoted below :

" I say that the working results profits and/or amounts distributable amongst the shareholders as dividend would have been much higher had the circumstances as mentioned in the order dated nth April, 1963, did not exist."

It appears from paragraph 6 of the petition that the petitioner-company was purporting to keep large sums in reserve and as a result thereof reduced the dividend from Rs. 37.50 nP. per share in 1958-59 to Rs. 28 per share in 1959-60 and thereafter to Rs. 10 per share during the years 1960-61 to 1962-63. Unreasonable declaration of dividends was upheld as prima facie ground for ordering investigation in the case entitled *In re Miles Aircraft Ltd.* [1948] W.N. 178 : [1948] 1 All E.R. 225 which I have discussed at length in my judgment in *New Central Jute Mills Co. Ltd.* If the Central Government came to hold the opinion that the working results and the rates of dividends declared were incompatible and if that suggested to the Central Government that there were circumstances suggesting the necessity of an investigation u/s 237(b), I cannot hold that the investigation was ordered without any legal excuse. I am, therefore, not inclined to strike down the investigation u/s 237(b). Although of this opinion, I record the same criticism that I did in *New Central Jute Mills Co. Ltd.*, in regard to the carriage of the investigation and administer the same caution to the present body of inspectors.

18. I now turn to the investigation ordered u/s 249(1)(a). An investigation u/s 249(1)(a) may be ordered :

(a) where any question arises as to whether any body corporate, firm or individual is or is not, or was or was not, an associate of the managing agent or secretaries and treasurers of a company, and

(b) it appears to the Central Government that there is good reason to investigate such question.

19. Regard being had to the language of the section, the Central Government may proceed on a prima facie theory to be proved or disproved with reference to facts later on ascertained. This means that the Central Government may direct investigation when it appears that there are good reasons but which reasons may

disappear when real facts became known. I have already dealt with this aspect in my judgment in *New Central Jute Mills Co. Ltd.* [1966] 36 Comp. Cas. 512 when dealing with an investigation ordered u/s 237(b) and need not repeat the same here. On the same reasons, I hold that in directing an investigation u/s 249(1) (a) the Central Government cannot proceed on mere subjective satisfaction but may proceed on grounds which appear to the Central Government to be *prima facie* reasonable. The grounds relied upon must to that extent be justified, if challenged before a court of law to be unreasonable or irrelevant or actuated by malice. Now, in the order, dated nth April, 1963, it was recited that the petitioner-company was found to be the selling agent of Rohtas Industries Ltd. and New Central Jute Mills Co. Ltd., both managed by their managing agents, Sahu Jain Ltd., and on that basis, it was said, there arose the question whether the petitioner-company was an associate of the managing agency company, within the meaning of Section 2(3) (c), and (d) of the Companies Act. In paragraph 18 of the petition, the petitioner-company categorically stated that it was not an associate of Sahu Jain Ltd. and that there did not exist any ground even to suspect that the petitioner was an associate. Paragraph 18 of the petition has been colourlessly dealt with in paragraph 14 of the affidavit-in-opposition, in the following language :

"I dispute the allegation contained therein that the petitioner is not an associate of Sahu Jain Ltd. In this respect I submit that the Central Government did have materials before it on the basis of which it formed an opinion that there was necessity to investigate the question of the petitioner being an associate of Sahu Jain Ltd. It is submitted in this regard that it was not necessary for the Central Government to set out any particulars of the good reason which led the Central Government to order the investigation. I further say that it is only after the investigation now in progress is completed the true status of the petitioner would be known,"

Now, merely by acting as selling agent of certain managed companies, a company does not, without more, become an associate of the managing agents of such companies, within the meaning of Section 2(3) (c) and (d) of the Companies Act. Thus the ground or the reason recited in the order, dated nth April, 1963, is of irrelevant consideration. The lacuna in the order might have been cured by pleading some reason in the affidavit-in-opposition but the respondents have not elected to do so. I might have compelled, following the principle enunciated by this court in *Daulatram Rawatmull v. Income Tax Officer* (Appeal from Original Order No. 309 of 1959), the respondents to place before this court and before the petitioner the materials which prompted the Central Government to proceed u/s 249(1)(a) of the Companies Act and to determine whether the condition precedent to such an action did in fact exist. Mr. S. Chaudhuri, learned advocate for the respondents, it should be noticed, was ready with the records and was prepared to disclose such materials to this court but not to the petitioner. But because of a further lacuna in the order noticed by myself, I am of the opinion, an order of compulsory disclosure of the grounds or

reasons for the action taken should not be made to salvage the situation, after the investigation had gone on for over two years and after the extreme steps of search and seizure had taken place. The further lacuna noticed by me is hereinafter stated.

20. The order for investigation u/s 249(1)(a) started on the plea as hereinbefore stated. Time for submission of the report was extended from time to time without any different plea until 15th June, 1963, when there was a separation of the combined investigations under Sections 237(b) and 249(1)(a) ordered and the time for investigation was extended. The order dated 15th June, 1963, however recited a different plea, namely :

" Whereas vide Central Government's order of even number dated the nth April, 1963, Shri S. Prakash Chopra of M/s. S. P. Chopra & Co., Chartered Accountants, 31-F, Connaught Place, New Delhi, was appointed as inspector to investigate the question as to whether Ashoka Marketing Ltd. is an associate of its managing agents, viz., M/s. Sahu Jain Ltd., as denned in Clauses (c) and (d) of Sub-section (3) of Section 2 of the Companies Act, 1956 (1 of 1956)."

The same plea was pleaded in the order dated 30th June, 1963, when the resignation of S.P. Chopra was accepted and the investigation u/s 249(1)(a) was entrusted to Puri-Menon-Gupta-combination of co-inspectors.

21. Now, admittedly, Sahu Jain Ltd. is not the managing agent of the petitioner-company. As a matter of fact the petitioner-company is not at all a company managed by a managing agent. How the different plea crept into the order is difficult to visualise. This may be due to mistake, oversight, inadvertence and the like, while summarising the original plea as in the order dated nth April, 1963, but may also be due to confusion while making the order. I have already indicated that the plea recited in the order dated nth April, 1963, is irrelevant without more. I am not sure whether the orders, dated 15th June and 30th June, 1963, intended to say what was lacking in the original order, although what was said was also incorrect and unmeaning. Since an order u/s 249(1)(a) can be made only if it appears to the Central Government that good reasons exist for an investigation, an order made ex facie on irrelevant ground in the first instance and thereafter confounded by incorrect and imaginary ground should not be upheld.

22. I have already expressed the opinion in New Central Jute Mills Co. Ltd. [1966] 36 CompCas. 512 that a Central Government order for investigation is not justiciable, 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. I have also held that it may not be necessary for the Central Government to recite its reasonings when making the order ; but if the exercise of power be challenged on the ground that it is actuated by malice in law, before a court of law, justification for the exercise of the power must not be withheld any more. In the instant case, the plea recited in the original order, dated 11th April, 1963,

has no nexus to Section 2(3) (c) and (d) of the Companies Act. The plea recited in the subsequent orders, dated 15th June and 30th June, 1963, is imaginary. Nothing was said in the affidavit-in-opposition in justification of the order, excepting by way of making reference to unknown contents in the office records. I am unable, therefore, to find any legal justification for the order.

23. Mr. Deb, learned advocate for the petitioner, found another defect in the order u/s 249(1)(a), which I need notice at this stage. He invited my attention to the order, dated 9th August, 1963, and submitted that by that order the investigation u/s 237(b) only was extended but not the investigation u/s 249(1) (a). The effect of this, according to Mr. Deb, was that the investigation u/s 249(1) (a) lapsed. He further submitted that the order dated 31st October, 1963, in so far as it attempted to revive and extend a lapsed order was infructuous to that extent. In support of his contention Mr. Deb relied on certain observations by the Supreme Court in *Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union*, . In that case the Supreme Court had to interpret the provisions of Section 6(1) of the U. P. Industrial Disputes Act, 1947, which peremptorily requires an adjudicator to submit his award to the State Government "within such time as may be specified " and not within such time as may be from time to time specified. In that context, the Supreme Court observed (at page 445):

"It is significant that the only occasion when the State Government can, under the U. P. Act, specify a fresh period of time is when it remits the award for reconsideration under Sub-section (2) of Section 6, for under subsection (3) the adjudicator is enjoined to submit his award, after reconsideration, within such period as may be specified by the State Government. Even in this case u/s 6(2) and (3) the State Government may in the order remitting the award specify a time within which the award, after reconsideration, must be filed. This gives the power to the State Government to fix a fresh period of time to do a fresh Act, namely, to reconsider and file the reconsidered award. It does not give the State Government any power to enlarge the time fixed originally for the initial making of the award.....

Learned advocate for the intervener, the State of Uttar Pradesh, draws our attention to Section 21 of the U. P. General Clauses Act, 1904, and contends that the order of 26th April, 1950, should be taken as an amendment or modification, within the meaning of that section, of the first order of February 18, 1950. It is true that the order of 26th April, 1950, does ex facie purport to modify the order of 18th February, 1950, but, in view of the absence of any distinct provision in Section 21 that the power of amendment and modification conferred on the State Government may be so exercised as to have retrospective operation, the order of 26th April, 1950, viewed merely as an order of amendment or modification, cannot, by virtue of Section 21, have that effect. If, therefore, the amending order operates prospectively,it cannot validate the award which had been made after the expiry of the time specified in the original order and before the date of the amending order, during which period the adjudicator was functus

officio and had no jurisdiction to act at all."

24. This decision is distinguishable. There is no statutory time-limit for making a report u/s 249. The limit of time fixed, under an investigation order, to submit a report has no effect on the pendency of the investigation. The failure on the part of an inspector to make a report within the fixed time may amount to a breach of duty on the part of the inspector but does not automatically bring the investigation to an end. In this view, I find inspiration from a judgment of the Supreme Court in *Andheri Marol Kurla Bus Services v. State of Bombay*, [1959] Supl. 2 S.C.R. 739 in which delay in submission of report by a conciliation officer u/s 12(6) of the Industrial Disputes Act, 1947, was held not to have the effect of terminating the conciliation, which continued until a settlement was effected or a report of non-settlement received. Therefore, even though there had not been any extension of time formally made for submission of the report, the inspector or inspectors might carry on the investigation to its close, however blameworthy he or they might have made himself or themselves for his or their failure to conform to the time schedule.

25. Mr. Chaudhuri, learned advocate for the respondents, advanced two arguments to save the orders, dated 9th August, and 31st October, 1963, from the onslaught of Mr. Deb. He submitted, in the first place, that the order dated 9th October, 1963, as made by the respondent-Deputy Secretary in fact extended the time for submission of report in respect of the investigation both u/s 237(b) as also u/s 249(1)(a) but in making out copies thereof, for service upon the parties, the line concerning extension of time for submission of report u/s 249(1)(a) dropped out through the typist's inadvertence and nobody detected the omission. In support of this submission he produced the original order and had his submission supported by an affidavit affirmed by the respondent-Deputy Secretary. I find no reason to disbelieve the affidavit, although I am constrained to observe that the department of Company Law Administration will never deserve an efficiency certificate, if the department conducts and continued to conduct its affairs in such a slipshod manner. Mr. Chaudhuri submitted, in the next place, that the petitioner-company acquiesced in the jurisdiction for investigation u/s 249(1)(a) in spite of the defect, if any at all, and it was not open to the company to find fault with the order so long thereafter. He relied on the observations of the Supreme Court in *PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)*., in support of this contention. I am not much impressed by this argument. If the petitioner-company submitted to the investigation under protest, as it says it did, there may not arise any question of acquiescence. I need not, however, go into this aspect at length, because I have already negated this branch of the argument of Mr. Deb on another ground.

26. Mr. Deb further contended that the question envisaged u/s 249(1)(a) must arise and it must appear to the Central Government that there were good reasons to order investigation. There would not be good reasons, according to

Mr. Deb, until the petitioner was heard. He, therefore contended, that to order an investigation without hearing the company was a violation of the principles of natural justice. In support of this contention Mr. Deb relied firstly on *Capel v. Child* (1832) 2 Cri&J. 558, and particularly on the following observations by Lyndhurst C.B.: .

"Here is a new jurisdiction given--a new authority given : a power is given to the bishop to pronounce a judgment; and according to every principle of law and equity, such judgment could not be pronounced or, if pronounced, could not for a moment be sustained, unless the party in the first instance had the opportunity of being heard in his defence which in this case he had not."

27. He also relied on *Fisher v. Jackson* [1891] 2 Ch.D. 84 and *Ridge v. Baldwin* [1963] 2 All E.R. 66 , both referring to the observations of Lyndhurst C.B. with approval. In my opinion the decisions do not support the contention. The investigation in question has not a quasi-judicial character. Nobody is an accused before the inspector. The inspector does not pronounce a judgment nor does he penalise anybody. The function of the inspector is equivalent to the function of a fact-finding mission: vide *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another*, . Considerations of natural justice are irrelevant in the conduct of such an investigation.

28. Mr. Deb also contended that Section 249(1)(a) contemplated the appointment of "an" inspector, meaning thereby a single inspector; as such, the appointment of co-inspectors was bad. In support of this contention he contrasted the language used in Section 249(1)(a) with the language used in Sections 235, 237(a) and 247, which speak of appointment of one or more persons as inspectors. I am not impressed by this argument. "An" inspector, in my opinion, should be read as any inspector and the singular would include the plural. The comparison of language of different sections will not necessarily establish the proposition contended for by Mr. Deb, because it does not always follow that the Legislature intends something different only because the language used in different sections is not exactly the same : vide observations of Lord Goddard in *Lines v. Hersom* [1951] 2 K.B. 682 .

29. Mr. Deb lastly contended that the investigations u/s 237(b) and 249(1)(a) could not be combined under one order and, if at all, two separate orders of investigation should have been made. He submitted that this was all the more so because powers exercisable under the two investigations were not the same, for example, an investigation u/s 249(1)(a) did not attract power of seizure of documents u/s 240-A. He invited my attention to Sections 249(2) and 247(5) in support of this argument. He further submitted that a combined order would create difficulties in apportioning costs of two different investigations lumped together. I am not convinced by the argument. Power to order investigation being there, it mattered little whether investigations under Sections 237(b) and 249(1)(a) were made under one order or by different orders and this is so even though all the powers exercisable under the different investigations are not

identical. Difficulties in apportioning costs must be faced by the authority making such an order and benefits of doubt in such apportionment must go to the company investigated.

30. Although I overrule the other arguments of Mr. Deb in condemnation of the investigation u/s 249(1)(a), still I quash the order for reasons herein before stated.

31. In the result the investigation ordered u/s 237(b) is upheld and this rule is discharged to that extent. The order of investigation u/s 249(1)(a) is, however, quashed and I restrain the respondents from further proceeding with the same. This rule succeeds and is made absolute to that extent. There will be no order as to costs.

32. I make it clear that nothing in this judgment shall stand in the way of the Central Government in making a fresh order of investigation u/s 249(1)(a) according to law, if good reasons for such an investigation exists.

33. Interim order shall continue for a period of a fortnight from to-day and shall thereafter stand vacated.