

(1979) 01 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Appeal No. 635 of 1978

Dhirendra Brahmachari

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 15-01-1979

Acts Referred:

Citation : (1979) ILR Delhi 65

Hon'ble Judges : Prakash Narain, J; Leila Seth, J

Bench : Division Bench

Advocate : A.K. Sen, Bishambar Lal, Soli J. Soharabji, K.N. Kataria and Karl Khandalawala, for the Appellant;

Judgement

Prakash Narain, J.

(1) The primary question which arises for determination is whether the rule regarding testimonial compulsion as contained in clause (3) of Article 20 of the Constitution of India is attracted on the facts of this case. "This guarantee is enshrined in the following words :

" NO person accused of any offence shall be compelled to be a witness against himself."

the petitioner invoked the above provision of the Constitution by declining to take oath and give testimony when called upon to do so before a Commission appointed under the Commissions of Inquiry Act, 1952, hereinafter referred to as the Act. The Commission being of the view that the said action of the petitioner constituted an offence under Sections 178 and 179 of the Indian Penal Code directed the lodging of a complaint against the petitioner. The complaint was lodged and the petitioner prosecuted. After his proceedings had taken place in the court of the Chief Metropolitan Magistrate the petitioner has approached this court under Article 226 of the Constitution claiming various reliefs, to which we will advert hereafter, the principal one being that the lodging of the complaint was illegal and without jurisdiction inasmuch as the alleged refusal of the

petitioner was in furtherance of the right guaranteed under Article 20(3) of the Constitution and so, cannot constitute an offence.

(2) Briefly stated the facts of the case are as under : The petitioner, who is a citizen of India, claims himself to be the founder President of Aparna Ashram, a society registered under the Societies Registration Act, 1860. This institution is claimed to be a charitable institution founded to advance the cause of Yoga, to make research in. Yoga in its manifold aspects, and to organise conferences as well as lectures and seminars in furtherance of that objective. The Aparna Ashram, under its constitution, is entitled to make applications for money and funds and accept gifts, donations and subscriptions in cash and kind. It is said to have established a centre at Mantalai in the State of Jammu and Kashmir. On May 6, 1976, on one of his visits to the United States of America, the petitioner claims to have received E donation of an aircraft for Aparna Ashram from M/s. Maule Aircraft Corporation of that country, more particularly described as an M-5-235C aircraft, valued at \$ 40,385. On July 1, 1976 Aparna Ashram made an application to the Government of India, Ministry of Finance, Department of Revenue and Banking to exempt payment of customs duty on the import of the said aircraft. An ad hoc exemption was granted on July 29, 1976. The aircraft was duly registered by the Directorate General of Civil Aviation on July 17, 1976. On August 19, 1976 the Director-General of Civil Aviation issued a certificate of airworthiness to this aircraft. Thus the Aparna Ashram imported the said aircraft.

(3) Pursuant to General Elections held in the country in March, 1977 there was a change in the Government. On May 28, 1977 the Central Government appointed Shri J. C. Shah, a retired Chief Justice of the Supreme Court of India, as Chairman of a Commission under the Act, (hereinafter referred to as the Commission). The terms of reference of this Commission and the reason for its appointment are evident from a reading of the notification No. S.O. 374(E) dated May 28, 1977 issued by Government of India, Ministry of Home Affairs.

(4) On July 25, 1977 the Central Bureau of Investigation registered a case against the petitioner u/s 406, Indian Penal Code . and started investigation with regard to certain allegations of cheating. We are A told that the charge-sheet as a consequence of that investigation has since been filed. It has been contended that the .C.B.1. also made some investigations regarding import of the aforesaid aircraft by Aparna Ashram and supplied the information to the Commission. 5. On February 3, 1978 the said Commission issued a letter of request to the petitioner to assist it by giving such information as may be in his possession or power pertaining to import of the said aircraft by him and landing facilities granted to the said aircraft at Mantalai in the State of Jammu and Kashmir and the use of the said aircraft by him. The petitioner wrote back to the Commission on February 7, 1978 stating that the said aircraft had since been seized by the customs authorities with regard to which he had filed a writ petition in the Delhi High Court and that further enquiry regarding the matter referred to in the letter of request may be pestle poned. On March 6, 1978 the Commission issued a

notice under Rule 5 (2) (a) of the Commissions of Inquiry (Central) Rules, 1972, hereinafter referred to as the Rules, calling upon the petitioner to furnish to the Commission a statement relating to import of the aircraft by him, recommendations of the D.G.G.A. grant of customs clearance permits, acquisition of the aircraft etc. It also directed the petitioner that the statement be furnished as required by clause (aa) of sub-rule (2) of Rule 5 of the aforesaid Rules and should be accompanied by an affidavit in support of the facts set out in the statement. The petitioner was further called upon to furnish along with the said statement a list of documents on which he proposed to rely and forward to the Commission the originals or true copies of such documents as may be in his possession or control and also state the names and addresses of the persons from whom the remaining documents may be obtained. The petitioner received this notice on March 18, 1978. No statement as required by the said notice was furnished to start with. The Commission on the same date, i.e. March 6, 1978, issued summons to the petitioner u/s 4(a) of the Act. This document reads as under :

"NO.SC/Secy/W/77 Shah Commission Of Inquiry PAT1ALA House, New DELHI-110001. Summons u/s 4(a) Of The Commissions Of Inquiry Act, 1952.

TO Shri Dharendra Brahma Chan A/50, Friends -Colony, Now Delhi.

WHEREAS the Commission set up under the Gazette of India Extraordinary, Notification No. S.O. 374 (E) dated the 28th May 1977 u/s 3 of the Commission's of Inquiry Act, 1952, to inquire into the matters specified in the said Notification, thinks it necessary to record your evidence orally.

ADD whereas it appears that it is necessary to inquire into your conduct in regard to those matters, it is hereby proposed to give you an opportunity of being heard in the inquiry and to produce evidence in your defense.

YOU are ,Therefore, hereby directed under authority vested in the Commission by Section 5(2) read with Section 8B of the Commissions of Inquiry Act, 1952 to appear before the Commission in person on 27th and 28th March 1978 at 10 A.M. at the Patiala House, New Delhi, to give evidence on oath in regard to all the facts within your knowledge pertaining to :

1.Import of Aircraft by Dharendra Brahamchari of Aparna Ashram recommendations of the office of the Dgca grant of customs clearance permit acquisition of the aircraft etc.

AND not to depart without the permission of the Commission. You are further directed to produce on that date the documents and records in your custody or power, which you may consider relevant to the Inquiry.

YOU are informed that you will be given opportunity to cross examine persons, whose statements have been recorded in regard to the matters specified hereinbefore and that you will be entitled to address the Commission, and that you will be entitled to be represented before the Commission by a legal

practitioner or with the permission of the Commission by any other person.

YOU are requested to sign the duplicate copy of the Summons and return it to the undersigned.

GIVEN under my hand this 6th day of March 1978. By Order of the Commission

SD..00

(P.R. RAJGOPAL)

Secretary, Commission of Inquiry

NOTE:

(I)If you desire to examine any .witness or witnesses in your defense in the aforesaid matter, the witness or witnesses may be kept present before the Commission on the date on which you are directed to appear.

(II)If you desire that summons be issued to procure the presence of such persons as your witnesses, you are requested to apply to the Commission for issuing summons to such persons at least a week before the date fixed for your appearance.

(III)If you desire to cross-examine persons whose statements have been recorded in regard to matters hereinabove, you are requested to intimate the names of such persons to the Commission at least 10 days before the commencement of the hearing so that summons to such persons may be issued in time."

The aforesaid summons was also received by the petitioner on March 18, 1978. Immediately on receipt of the said summons the petitioner filed a petition under Article 226 of the Constitution of India being Civil Writ No. 296 of 1978 in this court praying that the said summons be quashed and pleading that his being called for giving testy moony with regard to the matters mentioned in the said summons amounted to testimonial compulsion in violation of his rights guaranteed by Article 20(3) of the Constitution. The bench of this court which heard the matter at the admission stage was of the view that this aspect should first be agitated by the petitioner before the Commission.

(5) Accordingly, the hearing of the petition was adjourned on March 21, 1978. The petitioner thereupon appeared before the Commission on March 27, 1978 and moved an application paying that the notice under Rule 5 (2) (a) of the Rules and the summons u/s 4(a) of the Act be withdrawn. The Commission considered the application and heard counsel for the petitioner on the, submissions made therein- In the view of the Commission the contentions raised were not tenable. An oral order was pronounced rejecting the application. The petitioner who was present before the Commission was called upon to enter the witness box, take oath and give his testimony. The petitioner declined claiming that he was legally not compellable by the Commission to either take oath or to

give testimony before it. On this the Commission passed the impugned order directing the petitioner's prosecution under Sections 178 and 179 of the Indian Penal Code. In compliance with the orders of the Commission the Secretary of the Commission lodged the complaint with Shri P. K Jain, Chief Metropolitan Magistrate) New Delhi, on April 5, 1978. The petitioner was summoned by that court. He put in appearance and pleaded not guilty. He also moved an application on June 6, 1978 raising a preliminary objection that the complaint was untenable as the Commission had no jurisdiction to require him to bind himself on oath and give testimony about a matter which was subject matter of Police investigation and for which he may be prosecuted. This application had been moved in consequence of an observation of this court in a matter brought by the petitioner challenging the issue of summons by the Court of the Chief Metropolitan Magistrate. The application was dismissed and the trial proceeded with. C.W. No. 296 of 1978 was withdrawn by the petitioner on May 25, 1978 with liberty to file a fresh petition. He then moved the present petition and obtained rule nisi.

BY this petition the petitioner prays :

(A)an appropriate writ, order or direction in the nature of certiorari or any other writ. order or direction be issued quashing the order of the Commission dated March 27, 1978 directing prosecution of the petitioner under Sections 178 and 179 of the Indian Penal Code and the complaint dated April 5, 1978 filed in consequence of the said order in the court of Shri P. K. Jain, Chief Metropolitan Magistrate, Delhi. He further claims a declaration that it be held that the Chief Metropolitan Magistrate erred in law in taking cognisance of the complaint and proceeding with the trial ;

(B)a mandamus be issued to the Commission to withdraw the complaint filed by it ;

(C)that Section 8B of the Act be declared as unconstitutional, ultra virus and void, being violative of Articles 14, 19, 20(3) and 21 of the Constitution ; and (e) that Rule 5(2) (a) of the Rules be declared ultra virus the Act and Articles 14, 19, 20(3) and 21 of the Constitution.

(6) We may take note of the submission that the validity or virus of Section 8B of the Act and Rule 5(2) (a) of the Rules is challenged and we are requested to decide that only if we come to the conclusion that the protection granted by Article 20(3) of the Constitution was not available to the petitioner in the circumstances of the case.

(7) During the course of the hearing arguments have been addressed as to the scope of the investigation or inquiry before the Commission with reference to the notification by which the Commission was appointed. The argument is that the specific act of acquisition of the said aircraft etc. by the petitioner could not fall within the ambit of the inquiry or investigation which the Commission was authorised to carry out on a reading not only of the notification appointing it but the relevant provisions of the Act. We may, Therefore, at this stage read the

relevant parts of the notification dated May 28, 1977 by which the Commission was appointed. The same read as under:

Notification Appointing The Shah Commission Gazette Of India Extraordinary
Ministry Of Home Affairs Notification New Delhi, the 28th May, 1977

S.O.374(E). Whereas there is a widespread demand from different sections of the public for an inquiry into several aspects of allegations of abuse of authority, excesses and malpractices committed and action taken or purported to be taken in the wake of the emergency proclaimed on the 25th June, 1975 under Article 352 of the Constitution;

AND whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purposes of making inquiry into a definite matter of public importance, that is, " excesses, mal-practices and misdeeds during the Emergency or in the days immediately preceding the said proclamation, by the political authorities, public servants, their friends and, or relatives and in particular allegations of gross misuse of powers of arrest or detention, maltreatment of and atrocities on detenus and other prisoners arrested under. DI Sir, compulsion and use of force in the implementation of the family planning programme and indiscriminate and high-handed demolition of houses, huts, shops, buildings, structures and destruction of property in the name of slum clearance or enforcement of. town planning or land use schemes in the cities and towns resulting, inter alia, in large number of people becoming homeless or having to move far away from the places of their vocation.

Now, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central A Government hereby appoints a Commission of Inquiry consisting of the following, namely,

CHAIRMAN: Shri J. C. Shah, Retired Chief justice of the Supreme Court of India.

2.The terms of reference of the Commission shall be as follows:

(A)to inquire into the facts and circumstances relating to specific instances of

(I)subversion of lawful processes and well established conventions, administrative procedures and practice, abuse of authority, misuse of powers, excesses and/or malpractices committed during the period when the Proclamation of Emergency made on 25th June, 1975 under Article 352 of the Constitution was in force or in days immediately preceding the said Proclamation.

(II)misuse of powers of arrests or issue of detention orders where such arrests or orders are alleged to have been made on considerations not germane to the purposes of the relevant Acts during the aforesaid period.

(III)specific instances of maltreatment of and/or atrocities on persons arrested under Disir or detained and their relatives and close associates during the aforesaid period.

(IV) specific instances of compulsion and use of force in the implementation of the family planning programme during the aforesaid period.

(v) indiscriminate, highhanded or unauthorised demolition of houses, huts, shops, buildings, structures and destruction of property in the name of slum clearance or enforcement of Town Planning or land use schemes, during the aforesaid period,

PROVIDED that the inquiry shall be in regard to acts of such abuse of authority, misuse of powers, excesses, malpractices etc. alleged to have been committed by public servants, and

PROVIDED further that the inquiry shall also cover the conduct of other individuals who may have directed, instigated or sided or abetted or otherwise associated themselves with the commission of such acts by public servants ;

(B) to consider such other matters which, in the opinion of the Commission, have any relevance to the aforesaid allegations ; and

(E) to recommend measures which may be adopted for preventing the recurrence of such abuse of authority, misuse of powers, excesses and malpractices.

5. The Central Government is of opinion that having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of Section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952), should be made applicable to the said Commission and the Central Government hereby directs under sub-section (1) of the said Section 5 that all the provisions aforesaid shall apply to the said Commission.

[NO.11/6011/32/77S/&/(D.II)]

T.C. A. Srinivasavaradan, Secy."

(8) Before we proceed to notice the contentions raised on behalf of the petitioner we may also advert to the application which the petitioner moved before the Commission, on March 27, 1978. In that application the petitioner had given particulars regarding the acquisition of the) said aircraft, the information regarding the exemption" that was given regarding payment of customs duty, the import of the said aircraft and its registration- The petitioner had also contended that the Commission had been directed to inquire into the alleged excesses, malpractices and misdeeds of what was commonly known as the excesses of the Emergency and, Therefore, investigation "into the acquisition of the aircraft etc- did not fall within the ambit of the inquiry or investigation. The petitioner had further contended that the Commission was not validly appointed in law and that inquiry into the acquisition of the said aircraft was not a matter of public importance. He had submitted that the impugned notice and summons issued to him were not valid and that his being called upon to give testimony on oath would violate" his fundamental right under Article 20(3) of the Constitution.

It was alleged in" the application" that what the Commission was doing really amounted to enquiring into the commission of an offence by the petitioner and, Therefore, he was an accused and could claim the benefit of the protection against testimonial compulsion. The validity of Rule 5(2)(a) A was also challenged .It was, Therefore, pleaded that in those circumstances the petitioner could not be compelled to give testimony on oath before the Commission and the notice and summons be withdrawn. As already noticed earlier, these contentions were negated by the Commission which, however, did not give a finding on .the B validity of his appointment.

(9) In reply to the rule nisi affidavits have been filed on behalf of respondents I and 2. Respondent No. 1 had denied the averments and allegations of the petitioner. It has been stated that the Commission was validly appointed in accordance with law and there is nothing illegal in the impugned acts of the Commission. Shri B. K. Panigrahi, Inspector General of Police attached to the Shah Commission, has filed an affidavit in which he has relied upon the assessment order made by the Income Tax Department in which Aparna Ashram has been held not to be a charitable institution. He has stated that preliminary investigation revealed that the said aircraft was not donated to Aparna Ashram but was purchased by the petitioner. He admits that a case u/s 406 Indian Penal Code . had been filed against the petitioner .According to the deponent statements made by some witnesses before the Commission disclosed subversion of established procedures and exercise of undue influence by the petitioner which enabled him to get exemption from payment of customs duty and registration of the aircraft very quickly. Reference has also been made to the impugned order of the Commission in which assurance was given to the counsel for the petitioner that the Commission will not permit any question to be put or require the petitioner to answer any questions relating to matters on which the answers may be self-implicating. It has been further submitted that the petitioner was not an accused in respect of the matters which the Commission was enquiring into, no charges were leveled against him and there was no prosecution, Therefore, the) petitioner was not entitled to urge that clause (3) of Article 20 of the Constitution protected him from giving testimony on oath before the Commission.

(10) The affidavit of Shri A. K. Verma, Deputy Secretary to the Government of India in the Ministry of Home Affairs filed by way of return on behalf of respondent No. 1, Union of India, asserts, that the Commission was validly appointed u/s 3 of the Act by the Central Government after due compliance with the provision's of Articles 73 and 77 of the Constitution read with Government of India (Transaction of Business) Rules, 1961.

(11) Before we proceed to consider the contentions of the learned counsel for the parties on the various points and issues which were debated, we note a late development in this case and record our finding on it. When the hearing of the petition was nearly concluded, inasmuch as, the petitioner's counsel had

concluded his arguments" respondents" counsel had finished his submissions and the petitioner"s counsel had addressed us for some time in reply to the arguments of the respondents" counsel, an oral request was made on November 28, 1978 by the petitioner"s counsel that the petitioner be granted leave to withdraw the petition. This oral prayer was opposed by learned counsel for the respondents. We, Therefore, directed that the application for leave to withdraw the petition be made in writing with advance copy to counsel for the respondents who may submit a reply, if considered necessary. This application came up for hearing before us on November 29, 1978. After hearing the counsel we declined leave to the petitioner to withdraw the petition by a short order dated November 29, 1978 wherein we stated that the reasons for our declining the prayer would be recorded later. We now proceed to record those reasons.

(12) In his application dated nil but moved on November 29, 1978 the petitioner submitted that, inter alia, in view of the admitted facts specially on the point of Article 20(3) of the Constitution, his defense in the trial Court would be adversely affected in, case the writ petition was dismissed by this court. He further submitted in the application that he was "within his rights to withdraw the petition even when the arguments of the parties have almost concluded." In reply to this application the respondents submitted that the application was an abuse) of the process of the court an,d had been moved merely to delay proceedings and urge before the Chief Metropolitan" Magistrate the same arguments which had been urged at length during the hearing of the writ petition. The petitioner by his dilatory tactics had delayed the conclusion of his trial by nine months. On receipt of the summons from the Commission he had first moved this court under Article 226 of the Constitution; but then allowed that petition to stand over and moved the Commission to withdraw its summons. When the Commission rejected his prayer he appeared before the Chief ^ Metropolitan Magistrate and moved a similar application there. On an adverse finding in that court he moved the present writ petition. In any case several important questions of law have been raised which. need to be decided by this court. It was also pointed out that the petitioner had moved the Chief Metropolitan Magistrate by an application u/s 395 of the Code of Criminal Procedure) for a reference to this High Court precisely the same questions which have been raised in the present writ petition,. That application was declined by the trial Court on July 31, 1978. In this view of the matter now when the petitioner himself has moved this court under Article 226 of the Constitution he cannot be allowed to play hide and seek an,d take the matter once again to the court of the Chief Metropolitan Magistrate when the arguments have almost concluded on the points in this court. It has been submitted in the reply that if the petitioner succeeds in the present writ petition the prosecution would automatically come to an en,d but if he fails important questions of law would have been settled and proceedings in the trial Court could be concluded expeditiously.

(13) We are of the view that the petitioner should not be allowed to withdraw his

petition when the hearing had almost concluded, both because of his conduct and in law. The petitioner by moving an application u/s 395, Criminal Procedure Code . wanted the Chief Metropolitan Magistrate to refer to this court precisely the same questions which fall for determination in the present writ petition. He has approached this court un,der Article 226 of the Constitution and cannot be allowed to tell this court that now we should not proceed to judgment. He always wanted the High Court to decide the important questions of law which have been agitated by him before the Commission and before the Chief Metropolitan Magistrate. He has come to this court more than once raising these issues. He must have been, aware that these issues could legitimately be raised as defenses. Indexed, it was in that context that he was asked on the previous occasion (C.W. 296/78), when he approached this court to first go to either the Commission or to the court of the Chief Metropolitan Magistrate. He did so. Not being satisfied with the orders passed there, he finally deliberately moved this court and obtained rule nisi. Having obtained the rule he now wants one more round to the court of the Chief Metropolitan Magistrate and urge the same " contentions which he has urged here. To say the least this would be an abuse of the process of court. Apart from this, as we have noticed earlier, he obtained rule nisi. Once rule ha" been issued under Article 226 of the Constitution, it has either to be made absolute or discharged. The proceedings in writ jurisdiction may be civil proceedings but they are proceedings in the realm of public law. As has been held by a bench of this court in Mrs. Bharti Nayyar v. Union of India & others, ILR (1977) Ii Del 23, ".....in the public law area, which is what any matter pertaining to the issue of a writ of Habeas Corpus under Article 226 of the Constitution is, we are unable to visualise any compromise as such between the parities (it is not so here in fact) even without reference to Court especially after the issue of a rule nisi, which requires to be discharged by the Court." Even in certiorari, specially when there is no compromise, once rule nisi has been issued it has to be made, absolute if there is no valid return by the end of the day". Here we have a return and all that we are called upon to decide is whether it is a valid return. If it is valid, the rule must be discharged. If it is not valid, the rule has to be made absolute. There is no question, of compromise here and, Therefore, the petitioner should not be granted leave to withdraw the petition and discharge of the rule. In an appropriate case leave may be granted but where the court feels that the judicial process has been abused or the application for leave to withdraw is not bona fide, leave has to be refused and judgment pronounced. In our view, the petitioner"s belated request for leave to withdraw the petition cannot be called bona fide. We, Therefore, decline to grant leave to withdraw the petition and proceed to judgment.

RE: Scope and nature of an enquiry under the Act

(14) In order to decide whether the protection of Article 20(3) of the Constitution could be pleaded by the petitioner before the Commission it has first necessary to understand the nature, scope and effect of the proceedings under the Act. It is well-settled in our view, that in, proceedings of Commissions under the Act there

E is no accuser, no accused and no specific charges for trial before the Commission. The Commission under the Act is merely a fact-finding body meant to instruct the mind of the appropriate Government. The report and proceedings of a Commission are not documents of a judicial nature.

(15) A Bench of the Nagpur High Court in *M. V. Rajwade I.A.S. Dist. Magistrate v. Dr. S. M. Hassan and others*, Air 1954 Nag- pur 71(2), was called upon to decide a number of petitions u/s 3 of the Contempt of Courts Act, 1952, for taking action (* against various authors and publishers for contempt of court in writing and publishing articles which were allegedly in contempt of a Commission of Inquiry appointed by the Madhya Pradesh Government under the Act. It held that a Commission of Inquiry under the Act was not a "Court of justice" as defined by Section 20 of the Penal Code, 1860, and though a Judge may be appointed as the Commission he was not a Judge who is empowered in law to act judicially as would a Judge in a court of justice. No definitive judgment is given by a Commission and merely because of the fact that the procedure adopted by a Commission" is of a legal character and the Commission has power to administer oath will not impart to it the status of a court. It was further held that a Commission under the Act is only clothed with certain powers of a civil court by virtue of Section 4 of the Act but is not conferred the status of a court. A Commission under the Act is appointed by a Government "for the information of its own, mind" in order that it should not act in exercise of its executive power, "otherwise than in accordance with the dictates of justice and equity." It is a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature. Their Lordships of the Nagpur High Court relied on and noticed with approval the decision in *re : Maharaja Madhava Singh*, ILR 32 Cal 1 in making the above observations. The decision, of the Nagpur High Court has been noticed with approval by the Supreme Court in *State of Karnataka Vs. Union of India (UOI) and Another*, . It has been further observed that the observations of the Nagpur High Court were quoted with approval in *Brajnandan Sinha Vs. Jyoti Narain*, . We may quote the observations of the learned Chief Justice" of India in the above case. After noticing the scheme of the Act having been passed by Parliament it was observed as under:

"IT is clear from these provisions and the general scheme of the Act that a Commission of Inquiry appointed under the Act is a purely fact-finding body which has no power to pronounce a binding or definitive judgment. It has to collect facts through the evidence led before it and on a consideration thereof it is required to submit its report which the appointing authority may or may not accept. There are sensitive matter of public importance which, if left to the normal investigational agencies, can create needless controversies and generate an atmosphere of suspicion. The larger interests of the community require that such matters should be inquired into by high-powered commissions consisting of persons whose findings can command the confidence of the people. In his address "in the Lionel Cohen Lectures, Sir. Cyril Salmon speaking on "Tribunals of Inquiry" said:

" IN all countries, certainly in those which enjoy freedom of speech and a free Press, moments occur when allegations and rumours circulate causing, a nation-wide crisis of confidence in the integrity of public life or about other matters of vital public importance. No doubt this rarely happens, but when it does it is essential that public confidence should be restored, for without it no democracy can long survive. This confidence can be effectively restored only by thoroughly investigating and probing the rumours and allegations so as to search out and establish the truth. The truth may show that the evil exists, thus enabling it to be rooted out, or that there is no foundation in the rumours and allegations by which the public has been disturbed. In either case, confidence is restored."

IN the same case Untwalia, J. observed as under :

" A mere inquiry under the Act by a Commission appointed there under which is a fact-finding body, i? for the purpose of finding the facts. Nobody is a prosecutor; nobody is an accused; all are invited and welcomed by the Commission to assist it to find the necessary facts within the scope of the inquiry set up."

(16) Earlier in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, the Supreme Court laid down that a Commission of Inquiry has no judicial powers and its report would purely be recommendatory and not effective proprio vigore and the statement made by any person before the Commission of Inquiry is, u/s 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal. It was also held that there is no warrant for the proposition that a definite matter of public importance, contemplated by Section 3 of the Act must necessarily mean only some matter involving the public benefit or advantage in the abstract, e.g. public health, sanitation or the. like or some public evil or prejudice, e.g. floods, famine or pestilence or the like. Quite conceivably the conduct of an individual person or company or a group (if individual persons or companies may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry. Such a Commission, if appointed, has no power of adjudication in the sense of passing an order which can be enforced proprio vigore. A clear distinction must on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, a Commission is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry and report cannot be looked upon as a judicial inquiry I in the sense of its being an exercise of judicial function properly so called."

(17) There can be no doubt that the settled position of law as to the scope and effect of an inquiry by a Commission under the Act is anything else than what we have stated earlier. It was, however, first A contended that inasmuch as the acquisition of the aircraft etc. by the petitioner could and was most likely to form

the subject-matter of a criminal charge against him, the Commission could not or should not have enquired into the matters set out in the notice under Rule 5(2) (a) or summons issued u/s 4(a) of the Act to the petitioner. It was next submitted that the conduct of the enquiry by the Commission showed that in fact the petitioner was being treated as an accused and had been called upon to tender his defense.

(18) On the first aspect reliance was placed on an observation of the Bombay High Court in *Ram Krishna Dalmia v. Mr. Justice Tendolkar*, (1957) 59 Born. L. R. 769. In that case the Central Government had appointed a Commission u/s 3 of the Act, inter alia, to investigate the affairs of a number of Dalmia concerns and for investigating whether the investing public had suffered considerable losses on account of the acts of omissions and commissions by managements of those concerns. The Commission was also to inquire into the irregularities, breaches of trust and fraud committed in respect of the companies and firms whose affairs were to be investigated by the Commission and to recommend action which in the opinion of the Commission should be taken as and by way of securing redress or punishment. The Commission was also to recommend what measures in its opinion were necessary in order to ensure in future the due and proper administration of the funds and assets of the companies and firms in the interest of the investing public. The constitution of the Commission and the scope of its inquiry was challenged before the High Court. Chagla, C. J. speaking for the bench observed as under :

".....CLAUSE(10 stands on a different footing. Under that head the Commission has to investigate into breaches of the law which may come to its knowledge and it has to recommend action which in its opinion should be taken as and by way of securing redress or punishment or to act as a preventive in future cases. Both sides spent considerable time in advancing arguments as to what was the true construction to be placed upon this part of clause (1). The Solicitor General was at pains to emphasize ;that even with regard to these breaches of law the recommendation" was to be with regard to what should be done, in future so that the culprit would be punished and the victim would get redress. The Solicitor General has pointed out that clause (10) does not state that the action must be with regard to the matters enumerated in that clause. nor does it state that action must be against any individuals, and he asks us to read "in future cases" as qualifying not only the expression " to act as a preventive," but also "securing redress or punishment." We are afraid that the construction is much too strained, so strained that one almost hears the words creaking under it. It is impossible to take the view that "in future cases" qualifies "securing redress or punishment," and if it does not qualify these words, then it is clear that "securing redress or punishment" refers to the breaches of law enumerated in the earlier part of the clause. Therefore it is clear that the Commission is asked to point out to the Union Government what civil or criminal action can be taken with regard to these breaches of law. It is also significant that the expression used is "in future cases" and not "in the future" as is used in clause (II), and Therefore there is also

considerable force in the contention that "to act as a preventive in future cases" refers to breaches of law already discovered and the recommendation is to be with regard to action that should be taken in order to prevent similar breaches of law taking place in future in respect of companies into whose affairs the Commission has been investigating : and the suggestion is which has again force that it would be open to the Commission to suggest various proceedings that can be taken under Chap. Vi of the new Companies Act which is intended for preventive action. In our opinion, it is clear that to the extent that the Commission has been asked to recommend action for redress or punishment or to suggest action that may be taken under the provisions of the new Companies Act, the Commission has been asked to do something which is beyond the legislative competence of Parliament. The Commission has been called upon to do something which is not for the purpose of informing the Legislature in order to discharge its legislative function; it has been asked to inform the Government in order that Government should launch civil or criminal proceedings. Now, such an investigation can only be instituted by means of the judicial process and not through the device of a Commission. The result of permitting the Commission to do this would be to permit it to investigate into offences in a manner not warranted by the Criminal Procedure Code. The individuals named will be subjected to an inquiry without the protection afforded to them under the Criminal Procedure Code, and the investigation will be carried on without the judiciary vigilantly enforcing the safeguards in favor of these individuals. It is not open to the Government by this notification to put any individual in the position of an accused, to constitute a Commission to investigate into any offence that he might have committed, and to place before it materials collected so that on the strength of those materials a prosecution could be launched. To the extent that the first part of clause (10) can be related to clause (II), it would be competent to Government to get information with regard to breaches of law, so that legislation may be passed to prevent such breaches in future, and there is no reason to suggest why breaches of law referred to in the first part of clause (10) were to be investigated into only for the purpose of instituting civil or criminal proceeding and not also for the purpose of legislation. In our opinion, Therefore, the last part of clause (10) from the words "and the action" to "in future cases" is ultra virus of the Act and the Government is not competent to require the Commission to make any report with regard to these matters...."

OUR attention was also invited to an Introduction by K. K. Mathew, J., a retired Judge of the Supreme Court, to S- C. Gupta's book entitled "The Law relating to Commissions of Inquiry", Mathew, J. a very learned Judge, has expressed some personal opinions and we may quote the same- He has referred to a report of the Royal Commission on Tribunals of Inquiry, 1966 given in England and expressed the view, concurring with the view expressed in the said report :

" THE author has also elaborated as to what a commission should do when a criminal court is or becomes seized of the whole or part of the subject-matter of the terms of reference. The present writer has elsewhere explained the

embarrassment and difficulties to which a criminal COurt will be put if the Commission were to give its findings on the points referred to it before the criminal court gives its judgment. When an establish criminal court is seized of a case and has to go into the facts and circumstances pertaining to it it would be most inexpedient for a Commission to go into the matter at the same time and give its findings especially if the evidence before both the forums is practically the same. If a Commission were to arrive at certain findings, the invisible effect of such findings as a brooding omnipresence in the mind of the criminal court cannot be denied by any one who makes a realistic approach to the question. But it is said that the object of an inquiry under the Act is a probe to find the truth, whereas that of a criminal trial is to find the guilt of the accused. It sounds rather strange to be told that the object of a criminal trial is not to find truth but something else. Truth is not self-evident and can be reached mostly through fallible media of human testimony and a criminal court by applying more rigorous standard of proof, namely, proof beyond reasonable doubt after testing the admissibility and relevancy of the evidence under the provisions of the Evidence Act, may not be satisfied about the truth of the facts in issue as easily as the Commission conducting an enquiry would. It is because of this high standard of proof that when a criminal court feels reasonable doubt that the evidence does not reveal the truth or the whole truth that the accused is entitled to an acquittal. This does not in the least mean that the object of the criminal trial is not to find the truth of the facts alleged by the prosecution as Constituting the offence. It might be that even after the truth of the facts alleged by the prosecution as Constituting the offence has been found the accused would be acquitted in some case on a technical plea or on the ground that the facts proved do not constitute the offence charged. But this has nothing to do with the truth of the proposition that the first duty of a criminal court is to find the truth of the facts alleged by the prosecution. It might also be remembered that when the Commission has to enquire into a case and enter findings in respect of an act which amounts to a crime affecting the reputation of a person the standard of proof required will also be high. Even in civil proceedings when the proceedings of the Commission are civil in character when a finding has to be made on facts which constitute a criminal offence the standard of proof is one beyond reasonable doubt as explained by Lord Denning in *Barter v. Barter* : 1950 (2) All Er 458. S. R. Das a former Chief Justice of the Supreme Court who conducted the Inquiry into the allegations against Sardar Partap Singh Kairon under the 1952 Act has said in his report that :

" IN evaluating the evidence before it and regulating the proceedings the Commission had adhered to the time honoured principle embodied in the Evidence Act and Code of Procedure, not because they are binding but because they enshrine in themselves the sound and salutary good sense gathered through centuries of experience and wisdom."

"THIS in effect would show that practically the provisions of the Evidence Act will be applied by a Commission in the matter of relevancy and admissibility of

evidence. These circumstances would show that there is only minimal difference between the nature of the proceedings before a Commission when the Commission has to enquire into the conduct or matters affecting reputation of a person to which Section 8B is attracted and that of a criminal proceeding in respect of the same subject-matter. It will be highly embarrassing to a criminal court to depart from the finding of a Commission as ex hypothesis truth is the object of the probe by the Commission and that it must be presumed to have been found by it in the report. Not that the present writer is ignoring the difference in the burden of proof, even when an inquiry affects the reputation of an individual; between the two proceedings; but he thinks that they are so minimal that not much difference would be made on account of it. If the criminal court were to arrive at findings different from those of the Commission, then notwithstanding the minor difference in the burden of proof neither findings of the criminal court nor those of the Commission will inspire confidence in the public and the very purpose of appointing a Commission would be defeated.

WHAT is the purpose of setting up a Commission ? Is it to gather evidence and enter findings thereon by a person of undoubted probity on a definite matter of public importance so as to enable the Government to make up its mind and take appropriate civil or criminal action against the individual concerned or is it merely to enable the Government to make a declaratory decision and thus satisfy the public about the true state of affairs concerned the matter which created something like a crisis of public confidence? It would seem that the object of appointing a Commission is to serve both these purposes. Commission however is not a mere investigating agency to gather evidence, to enable the prosecution of the person concerned in a criminal, or to take proceedings against him in a civil court. That could be done by the ordinary investigating agency."

(19) As far as the Bombay case is concerned, besides the fact that same has been over-ruled by the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , it has to be read as a whole to really appreciate in what context Chagla, C.J. made the observations relied upon. What was held was that if in appointing a Commission the legislature wishes to arrogate to itself the duties of the judicial organ, the appointment of such a Commission is clearly bad. The Legislature may not inquire or investigate into individual wrongs or private disputes in order to bring the culprit to book and in order to gather material for the purpose of initiating proceedings, civil or criminal, against him, because such inquiry or investigation is clearly not in aid of legislation but, what might be called, in aid of judgment. At the same time it was observed that it would be for the legislature to say on what matters it needs information. It may wish to take the survey of the whole scene or it may limit its investigation to any particular aspect of the matter. It may wish to inquire into an evil generally or it may wish to inquire into any particular aggravated form of that evil. It may even desire that the conduct of an individual or individuals, should be investigated into in order that the evil should be understood in a more emphatic form. The Court must presume that when Parliament appoints a Commission for the purpose of

inquiry it has appointed it for a legitimate purpose. Therefore, merely because there is a possibility of the petitioner being prosecuted for an alleged offence in connection with unlawful import of aircraft or alleged avoidance of payment of customs duty, it cannot be said that in the larger context of subversion of established procedure the Commission was not empowered to go into the matters referred to it by the notification appointing it.

(20) The observations of Mathew, J. or the Royal Commission in England or the hope expressed by S. R. Das, C.J. in *Sardar Pratap Singh Kairou's* case would only be relevant in the circumstances of a given situation. The same also would be true of the observations of Lord Denning in *Barter v. Barter*, 1950 (2) All. Er 458. As A noticed by Mathew, J. in the Introduction relied upon, the Central Government perhaps had these factors in view when it decided or agreed with the decision of the Kerala Government that Rajan's case need not be referred to Viswanatha Iyer Commission as a criminal court was seized of it. The important aspect is that a Commission should not dealt with a matter if a civil or criminal court is already seized of it. The rule would not be attracted where there is only a possibility of prosecution. Apart from that as observed by Chandrachud, C. J. in the case of *State of Karnataka v. Union of India* and another, already noticed earlier, "There are sensitive matters of public importance which, if left to the normal investigational agencies, can create needless controversies and generate an atmosphere of suspicion. The larger interests of the community require that such matters should be inquired into by high-powered commissions consisting of persons whose findings can command the confidence of the people." Therefore, the settled law is that even if the petitioner was apprehending a prosecution in respect of the acquisition etc. of the aircraft by Aparna Ashram the Commission cannot be held to be incompetent to have inquired into matters enumerated in the aforesaid notice.

(21) On the aspect that the petitioner was really an accused before the Commission we are of the view that the contention is untenable. To repeat what we have stated earlier, there is no accused and there is no 17 accuser before a Commission appointed under the Act. Learned counsel for the petitioner invited our attention, to extracts from the proceedings before the Commission to substantiate that the petitioner was accused of a crime before the Commission. He referred to the testimony of V. N. Kapur who was being examined by the Commission in the context of the alleged subversion of established administrative procedures. The Commission made an observation that it would not have gone into the matter of the import of the aircraft deeply except for the reason that at every stage very striking circumstances appear; an application was made, disposed of, file moving at express speed, necessary requirements which, must be complied with not being complied with and there being some evidence before the Commission that the aircraft was purchased and not donated resulting in possible serious offence appearing to have been committed in regard to foreign exchange. At another place during the recording of the testimony of V. N. Kapur counsel seem to have suggested that offences under various laws have been

committed which might amount to the aircraft being considered as having been smuggled into the country and the Commission observing that there seemed to be a prima facie case of the violation of the Foreign Exchange Regulation Act and other laws. Similar observations A were referred to as having been made during the course of the examination of Prof. Chattopadhyaya. From all this it was submitted that in fact the perpetration of a crime or crimes was being enquired into and, Therefore, the petitioner became an accused before the Commission.

(22) In common parlance one may say that the petitioner was being accused of what might be considered offences under various laws of the land but keeping in view the scope and nature of the proceedings before a Commission it cannot be said that the petitioner was an accused. Indeed, the context in which the inquiry was being held was, as stated in the notification appointing the Commission, "subversion of lawful processes and well-established conventions, administrative procedures and practice, abuse of authority, misuse of powers" and "the inquiry was also to cover the conduct of other individuals who may have directed, instigated or sided or abetted or otherwise associated themselves with the commission of such acts by public servants." Sarvshri V. N. Kapur and Prof. Chattopadhyaya were public servants and in inquiring into their conduct it necessarily led to inquire into the conduct of others who may have directed, aided, abetted or persuaded these public servants to act in abuse or misuse of power, authority or procedure.

RE: Article 20(3) :

(23) If we are right in our view expressed above, the next aspect which will have to be considered is as to when the protection guaranteed by Article 20(3) of the Constitution can be invoked. Two conditions must be satisfied before invoking aid of clause (3) of Article 20 of the Constitution. First, that the proceedings must be in the nature of criminal proceedings before a court of law or a judicial tribunal. Second, that the person invoking Article 20(3) must be an accused.

(24) In *Maqbool Hussain v. The State of Bombay*, A. I. R. 1953 S. C. 730 , it has been clearly held that the wording of Article 20 of the Constitution and the words used therein show that the proceedings therein contemplated are proceedings of the nature of criminal proceedings before a court of law or a judicial tribunal and "prosecution" in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure.

(25) In *S.A. Venkataraman Vs. The Union of India (UOI) and Another* , the above principle in *Maqbool Hussain's A* case has been reiterated and it was held that proceedings held under the Public Servants (Inquiries) Act, 1850 did not amount to prosecution within the meaning of Article 20(2) of the Constitution.

(26) In *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another* , the Supreme Court was called upon to consider whether the protection of Article

20(3) of the Constitution was available in investigations under the Companies Act, 1956. American Law was cited in that case, as it has been cited before us, and the plea was, as is before us, to quote from the speech of Bradley, J. in *Boyd v. United States* (1884) 29 Law Ed. 746, .

" ILLEGITIMATE and unconstitutional practices get their first footing in that way, namely by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed." ".... any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime or to forfeit his property is contrary to the principles of free government....." ".....is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom."

After noticing that under the English Law the doctrine of protection against self-incrimination has never been applied in the departments of Company Law and Insolvency Law their Lordships held that however attractive may be the plea, as noticed above, its validity and effectiveness would have to be examined in the light of the previous decisions of the Supreme Court on the construction of clauses (2) and (3) of Article 20 of the Constitution. They noticed with approval the decision in *Maqbool Hussain's* case and held that in our country and under our Constitution an accused has to be an accused in a court of criminal jurisdiction and a prosecution is entirely different from an investigation or an inquiry. Therefore, the principles which may be guiding American courts can be of no avail here as our law has been settled by our Supreme Court.

(27) It was then urged that to be an accused it is not necessarily required that a formal prosecution must have been, launched. Reliance was placed on the decision of the Supreme Court in *Nandini Satpathy Vs. P.L. Dani and Another*, . learned counsel for the petitioner quoted from the speech A of V. R. Krishna Iyer, J. that, "Section 161 of the Criminal Procedure Code enables the police to examine the accused during investigation. The prohibitive sweep of Article 20(3) of the Constitution goes back to the stage of police interrogation not commencing in court only. Both the provisions substantially cover the same area so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. The phrase "compelled testimony" must be read as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Art. 20(3). The prospect of prosecution may

lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes "compelled testimony", vocative of Art. 20(3)." Indeed the." main plank of the petitioners argument is based on these observations in the case of Smt. Nandini Satpathy the portion of the speech relied upon, which we have quoted, may make the plea-raised attractive but on, closer scrutiny we find that it cannot be accepted. The contention that there were threats of prosecution in and outside the Commission would not convert the status of the petitioner to that of an "accused" nor would the proceedings before the Commission get the status of judicial proceedings. Indeed, after an elaborate examination of a similar plea based primarily on the state of law in the United States of America and after examining the law settled by the Supreme Court in various cases, Krishna Iyer, J. observed as under : *

"IT is plausible to argue that, where realism prevails over formalism and probability over possibility, the enquiries under criminal statutes with quasi-criminal investigations are of an accusatory nature and are sure to end in prosecution, if the offence is grave and the evidence gathered good. And to deny the protection of a constitutional shield designed to defend a suspect because the enquiry is preliminary and may possibly not reach the court is to erode the substance while paying hollow homage to the holy verbalism of the article. We are not directly concerned with this facet of Art. 20(3); nor are we-free to go against the settled view of this Court, here it is."

Thus, law remains what was settled in the cases of Maqboot Hussain, S. A. Venkataraman and Raja Narayanlal Bansilal. As observed in Raja Narayanlal Bansi Lal, "the investigation carried on by the inspectors is no more than the work of a fact finding commission. It is true that as a result of the investigation made by the inspectors it may be discovered that the affairs of the company disclose not only irregularities and malpractices but also commission of offences, and in such a case the report would specify the relevant particulars prescribed by the circular in that behalf. If, after receiving the report, the Central Government is satisfied that any person is guilty of an offence for which he is criminally liable, it may, after taking legal advice, institute criminal proceedings against the offending person under S. 242(1); but the fact that prosecution may ultimately be launched against the alleged offender will not retrospectively change the complexion or character of the proceedings held by the inspector when he makes the investigation."

(28) The observations in the proceedings of the Commission either by the Commission or by a counsel cannot be regarded as formal accusation or an accusation so as to attract Article 20(3) of the Constitution. Evidence may have been placed before the Commission of what may constitute offences but the scope of the inquiry was not akin to criminal trial or even police investigation u/s

161 of the Code of Criminal Procedure. We shall presently deal with why notice or summons were at all issued to the petitioner. By the issuance of that or the phraseology thereof would not make the petitioner an "accused" or the proceedings in regard to him a "prosecution". Clearly, Therefore, the petitioner could not invoke Article 20(3) of the Constitution, as he did.

(29) We may also notice the clear-cut assurance given by the Commission to the petitioner that no question would be allowed to be put to him and he would not be required to answer any question which could be regarded as self-implicating. Although Article 20(3) of the Constitution could not be invoked yet in all fairness this assurance had been given to the petitioner and perhaps he would have been well advised to accept it.

(30) In the view that we have taken above on this point it is unnecessary to dilate on whether the aspect relied upon by the petitioner in the judgment of the Bombay High Court (59) Bom. L. R. 769 stood overruled by the Supreme Court in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, .

(31) One other aspect we may mention in passing and that is with regard to the plea that in terms of the observations of Krishna Iyer, J. in Smt. Nandini Satpathy's case the petitioner had become an "accused". In police investigation a person is "accused" of an offence, as has been held in Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another, but before a Commission appointed under the Act the law is well-settled that there is no accuser and no accused and so, the ratio of Nandini Satpathy's case cannot be availed of by the petitioner.

RE: Provisions of the Act and the Rules vis-a-vis Article 20(3).

(32) Section 4 of the Act confers on the Commission the powers of the Civil Court while trying a suit under the CPC in respect of prescribed matters including summoning/and enforcing the attendance of any person from any part of India and examining him on oath. Section 5(2) confers power on a Commission to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry. A person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code. Section 5(4) declares that the Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts Constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to "him u/s 482 of the Code of the Criminal Procedure, 1898. Section 6 lays down that no

statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him, in any civil or criminal proceeding except a prosecution for giving false evidence by such statement and provided such statement is made in reply to a question which he is required by the Commission to answer or is relevant to the subject-matter of the inquiry. Section 8B incorporates the principle of natural justice. It reads as under.

"If, at any stage of the inquiry, the Commission :

(A) considers it necessary to inquire into the conduct of any person; or

(B) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

THE Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defense: Provided that nothing in this section shall apply where the credit of a witness is being impeached."

(33) In exercise of the powers conferred by Section 12 of the Act the Central Government promulgated the Commissions of Inquiry (Central) Rules, 1972. Rule 5 sets out the procedure to be adopted by a Commission of Inquiry and is relevant to Section 8 of the Act which lays down that the Commission shall subject to any rules that may be made in this behalf have power to regulate its own procedure. under sub-rule (2) of Rule 5 a Commission is required, as soon as it may be after its appointment, to issue a notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry, to furnish to the Commission a statement relating to such matters as may be specified in the notice. Sub-rule (3) of Rule 5 lays down that every statement furnished under sub-rule (2) shall be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement. Sub-rule (4) of Rule 5 requires documents to be furnished. Sub-rule (5) of Rule 5 requires the Commission to go through the statements furnished to it and thereafter record the evidence of such persons as it considers necessary. It provides for various other things which it is not necessary to note in this case.

(34) The Commission issued a notice under Rule 5(2) (a) to the petitioner and it is the admitted case that to start with the petitioner did not comply with the request made therein. It was urged that ultimately the petitioner did comply with this notice by giving all the information in his application dated March 27, 1978. There is no further controversy regarding this except to the extent that the validity of the rule has been challenged on which we will advert later. The real dispute is with regard to the summons issued u/s 4(a) of the Act in which it was also stated that the Commission considered it necessary to inquire into the petitioner's conduct and, Therefore, proposes to give him an opportunity of being heard in the inquiry and to produce evidence in his defense. The contention is that the petitioner was not bound to appear and give evidence and the Commission calling upon him to take oath and depose amounted to

"compulsion" within the meaning of Article 20(3) of the Constitution and was ultra virus or in derogation of the provisions of Section Sb of the Act. It was also urged that compelling the petitioner to depose on oath would be vocative of his fundamental rights under Article 14 of the Constitution.

(35) The Commission having been appointed by the Central Government, it had to function in accordance with the provisions of the Act and the Rules framed there under. It became the duty of the Commission to inquire into and investigate the matters referred to it. One of the matters referred to the Commission was to inquire into what may be generally called "the subversion of established administrative procedures". The Commission invited the public in general and some individuals in particular to point out instances wherein there was alleged subversion of established administrative procedure. One of the instances which appears to have come to the notice of the Commission was the acquisition of the said aircraft by Aparna Ashram, allegedly by subversion of established administrative procedure and by use of undue pressure or persuasion. The petitioner appears to have been named in connection with this instance. After having examined Professor Chattopadhyaya and Shri V.N. Kapoor etc. the Commission felt, as it was entitled to, that the petitioner's evidence would throw light on the alleged instance. Therefore, in accordance with the provisions of the Act and the Rules, first of all, the Commission issued a notice under Rule 5(2) (a). It also issued the impugned summons. By virtue of the provisions of Section 4 of the Act the summons could be issued. If the petitioner appeared in response to the summons there was an end of the matter. If he did not appear, then the Commission had the powers of the Civil Court to enforce his attendance. Section 5(2) enables the Commission to call upon any person to give evidence and enjoins upon the person so called to give evidence. If he does not do so, provisions of Sections 176 and 177 of the Indian Penal Code are attracted. The Petitioner by ultimately putting in appearance complied with the summons and was present before the Commission. When he was called upon to give evidence, which he was legally bound to give, the petitioner appears to have declined. At this stage he could have, perhaps, been prosecuted under Sections 176 and 177 of the Indian Penal Code but he is not being so prosecuted and we are not called upon to comment further on this aspect. What happened was that when the petitioner was called upon to enter the witness box and give evidence on oath he declined to comply with this request and is being prosecuted under Sections 178 and 179, 1. P. C. Whether in the circumstances of the case it becomes an offence is a matter which is sub judice and is required to be decided by the competent Magistrate. The petitioner has, however, approached us to decide whether the complaint as filed was within the competence of the Commission and whether the Chief Metropolitan Magistrate was competent to entertain the same.

(36) In our opinion, in view of the provisions of Section 4 and 5 of the Act on the petitioner declining to give testimony on oath the Commission acted legally and within jurisdiction in lodging the complaint. The complaint having been lodged it

is the duty of the Magistrate to inquire into it and we see nothing illegal in his having taken cognisance of the complaint. It was urged on behalf of the petitioner that it is on account of the protection granted by Articles 14 and 20(3) that the Commission's action in calling upon the petitioner to take oath and give evidence becomes one without jurisdiction and in consequence the Chief Metropolitan Magistrate acted without jurisdiction in taking cognisance of such a complaint. We have already observed that in our view Article 20(3) of the Constitution is not attracted. Even if the petitioner thought that he had or was advised that the protection of Article 20(3) was available to him, he could not claim what may be called a blanket immunity. He would have been better advised to have entered the witness box, taken oath and then claimed protection of Article 20(3) of the Constitution to specific questions asked of him, particularly in view of the assurance that had been given to him by such a high powered Commission. Indeed that to us is the tenor even of the Supreme Court's judgment in Smt. Nandini Satpathy's case

(37) The element of "compulsion" postulated by Article 20(3) of the Constitution would be relevant only if that Article can be invoked in proceedings before the Commission. We have already held that it could not be invoked. It is, Therefore, not required that we further dilate on the other provisions of the Act, like Section 6 there- of.

(38) It was then urged that in view of the provisions of Section 8B the Commission could not call upon the petitioner to give testimony on oath as Section 8B entitled the petitioner to decline to say anything and the option was his to seek or not to seek to clarify any alleged aspersion on his conduct. Reliance was placed on a decision of this Court in P.R. Nayak Vs. Union of India and Others, . In this case the point in issue was whether A the notices issued by the Commission u/s 8B to various persons could be so issued on the basis of affidavits of one person without first determining their relevancy or that circumstances existed, as postulated in Section 8B to hold the inquiry into the conduct of any person. In that context and dilating on the scope and purpose of Section 8B of the Act what this Court held was that it did not see any reason why the Commission could not be said to have been justified in taking the allegations of the affidavit of Choudhury as basis for issuing the impugned notices and this fact alone would not establish that there was no application of mind by the Commission before the issue of notices u/s 8B. It was further observed that the section incorporates and embodies the rule of natural justice not to condemn a person without affording him an opportunity of being heard. It is open to the person to whom a notice is issued not to avail of the opportunity afforded to him to appear and produce evidence in his defense in which case his conduct and reputation will be inquired into in his absence. No doubt a person, to whom a notice is issued u/s 8B, has the option not to produce evidence in what may be called his defense but that is something quite distinct from declining to take oath when called upon by an authority entitled to do so and when the person required to give evidence is present before that authority. One must bear in mind that the

prosecution is not u/s 176 or u/s 177, 1. P. C. or Section 8B of the Act being raised as a good defense. The prosecution in the present case is under Sections 178 or u/s 179, 1. P. C., which is an altogether different offence. Therefore, there is nothing laid down in P. R. Nayak's case by this court which can be taken advantage of by the petitioner. The view expressed in Puhuram and others v. State of Madhya Pradesh and others, 1968 Madhya Pradesh Law Journal-629(13) is the same as in P. R. Nayak's case and, Therefore, that decision is also of no help to the petitioner.

(39) Relying on Maneka Gandhi v. Union of India, A. I. R. 1978 H S. C. 597, it was urged that the denial of the right to the petitioner to refuse to appear before the Commission would be a denial of his fundamental right under Article 14 of the Constitution. The relevant portion of the speech of Bhagwati, J., which was read to us, may be. quoted:

" NOW, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, Therefore, it must not be subjected to a narrow, pedantic or lexicographic approach-. No attempt should be made to truncate its all-embracing scops and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what v/as pointed out by the majority in E.P. Royappa Vs. State of Tamil Nadu and Another, namely, that "from a positivistic point to view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is Therefore vocative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a broodmg omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive ; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

(40) In our opinion, in the facts of the present case Article 14 cannot be pleaded by the petitioner to contend that he had a right to decline to take oath and give testimony despite his being present before the Commission on March 27, 1978 and despite his having invited the Commission by an application to recall its summons. There is no Justness and fairness in first inviting the Commission to decide whether it would withdraw its summons and then declining to enter the witness box and give testimony on oath though under law the petitioner was

bound to do so especially when he had appeared before the Commission. The contention that it would have been just and fair for the Commission to have acceded to the request of the petitioner to withdraw the summons and not inquire into the various aspects of the acquisition of the aircraft as there was likelihood of a criminal prosecution has already been commented upon by us earlier. The A Commission had to do its duty and was doing it to the best to its understanding and within the ambit of the power vested in it. It cannot be said in issuing the impugned summons it acted without application of mind or in excess of the powers conferred upon it. In its view a certain aspect had to be inquired into on the basis of the material placed before it and since the petitioner's conduct could be adversely commented upon, he was given an opportunity u/s 8B of the Act which he could or could not avail as he thought fit. However, in order to complete the investigation the Commission could summon the petitioner as it did and inasmuch as the petitioner was present he could be called upon to give testimony on oath. On his declining to do so the Commission chose to lodge a complaint under Sections 178 and 179, 1. P. C. We cannot see any violation of Article 14 of the Constitution. The law of the land has taken its course as it should.

RE.: Validity of Section 8B of the Act and Rule 5(2)(a) of the Rules.

(41) Section 8B of the Act, as we have already observed, and as has been held in P. R. Nayak's case, is a provision giving statutory recognition to the rule of natural justice. It cannot be said to be ultra vires of Articles 14, 19, 20(3) and 21 of the Constitution by any stretch of imagination. Indeed, this section embodies the principle of justness and fairness and that would be in accordance with the established principles of the rule of law. We cannot see how an option given to a party and a duty imposed on a Commission can, in any way, be unconstitutional.

(42) Rule 5(2)(a) of the Rules enables the Commission to call upon any person who in its opinion should be given an opportunity of being heard in the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notice. So long as the notice is with regard to matters which are within the competence of the Commission to inquire into it cannot be invalid. The principles of the rule of law embodied in Articles 14, 19, 20(3) and 21 of the Constitution do not envisage that an inquiry under "a valid law be stultified. Indeed, the power as given by Rule 5(2)(a) is in furtherance of the principles of rule of law and anyone receiving a notice, in order to uphold the rule of law, should comply with it. The notice has to be construed fairly and in accordance with the maxim *ut res magis valeat, quam pereat* (that an act may avail rather than perish). It is clear from a reading of the notice that the reference to Section 8B of the Act is merely an intimation to the petitioner that under its provision he may or may not choose to avail of the provisions of that section. In these circumstances Rule 5(2)(a) cannot be said to be in conflict with section 8B of the Act.

(43) It was urged that if the petitioner had a right to avail of Section 8B and yet

he was called upon to give testimony, then Section 8B B becomes ultra virus Article 14 of the Constitution. We are not able to appreciate the argument. Under the provisions of Section 5(2) of the Act a person who is called upon to give information is bound to furnish the same within the meaning of Sections 176 and 177 of the Indian Penal Code- u/s 5(4) the Commission is deemed to be a Civil Court and when any offence, as is described, inter alia, in Sections 178 and 179, 1. P. C is committed in the view or presence of the Commission, the Commission may after recording the facts Constituting the offence forward a complaint to the appropriate Magistrate. Compliance or non-compliance with a statutory notice or a court summons is quite distinct from the offences postulated by Sections 178 and 179 of the Indian Penal Code. Section 8B of the Act is a facility available to a person but that facility does not allow anyone to violate law or act in a manner which may allegedly be an offence. The equal protection of law or equality before the law does not envisage violation of law.

(44) The result is that we dismiss the petition, discharge the rule and vacate the interim stay orders passed on October 12, 1978.