

(2004) 05 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 49896 of 2003

Jai Prakash Associates Ltd.

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Commissions of Inquiry (Central) Rules, 1972 — Rule 5(2)
Commissions of Inquiry Act, 1952 — Section 3, 8B, 8C
Constitution of India, 1950 — Article 226

Citation : (2004) 3 AWC 2059

Hon'ble Judges : Tarun Chatterjee, C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : Rakesh Dwivedi, V.K. Upadhyay, Devendra Kumar Arora and Rajesh Shukla, for the Appellant; Sudhir Chandra, S.C., for the Respondent

Judgement

Ashok Bhushan, J.—We have heard Sri Rakesh Dwivedi, senior advocate assisted by Sri V.K. Upadhyay and Sri Devendra Kumar Arora, advocates for the petitioner and Sri Sudhir Chandra, senior advocate assisted by learned standing counsel appearing for the respondents.

2. By this writ petition the petitioner has prayed for quashing the notification dated 26.9.2003 appointing Single Member Commission of Inquiry. Another prayer which was subsequently added is to quash the decision of the State Government as contained in letter dated 25.1.2004 Annexure-16 to the Writ petition issued by Sri Ravinder Singh. Secretary, Handloom and Environment, U.P. Government by which Shri Vijay Shanker Mathur was communicated about his appointment for submitting a report regarding prima facie irregularities found with regard to NOIDA, GREATER NOIDA, Taj Express Way project. It has further been prayed that entire proceedings and report of the Inquiry Commission be quashed.

3. Brief facts necessary for deciding the issues raised in this writ petition are :

Writ Petition No. 40074 of 2003, Ashutosh Srivastava v. State of U.P., a Public

interest litigation had been filed in this Court alleging that Taj Express Way project has been given by the State Government without following norms. The Division Bench of this Court passed an order on 11.9.2003 on an interim application in the above writ petition appointing Hon''ble Mr. Justice A.N. Varma, a retired Judge of this Court and former Chairman of M.R.T.P. Commission of India to enquire into the alleged scam. The Division Bench of this Court directed that a gazette notification be issued by the State Government u/s 3(1) of the Commissions of Inquiry Act, 1952 notifying the appointment of Hon''ble Mr. Justice A.N. Verma as Chairman of the Commission. The State Government filed two applications in the above writ petition on 15.9.2003 praying for staying the effect and operation of the order dated 11th September, 2003 during the pendency of the stay vacation application. The State Government in the said affidavit stated that it is already seized of the matter and an enquiry has already been ordered to enquire various alleged acts of omission and commission and there is no necessity of holding parallel enquiry by the High Court u/s 3 the Commissions of Inquiry Act, 1952. On considering the aforesaid applications and affidavit of the State Government, the Division Bench of this Court of which one of us (Hon''ble Tarun Chatterjee, C.J.) was a member, vide its order dated 16.9.2003 directed the State Government not to issue any notification appointing an inquiry commission as directed by the interim order dated 11.9.2003 till the decisions are made in two interim applications filed by the State Government. After passing of the order dated 16.9.2003 in the Writ Petition No. 40074 of 2003 the State Government issued the impugned notification dated 26.9.2003 in exercise of its power u/s 3 of the Commissions of Inquiry Act, 1952 (hereinafter to be referred as "the Act") appointing Hon''ble Mr. Justice Sri Rang Misra, a retired Judge of this Court as Single Member Commission of Inquiry in the matter pertaining to Project Taj Express Way.

4. The Inquiry Commission commenced its proceedings on 1st October, 2003 by calling upon the State Government as well as the Taj Express authority to produce entire documents/records relating to the project. The Commission also issued a general notice dated 7.10.2003 calling the public in general to give information and materials to the Commission by an affidavit till 15th October, 2003. The general notice was published in various newspapers on 8th October, 2003. Notice was also issued to the petitioner dated 6.11.2003 calling upon the petitioner to place its stand on 12.11.2003 with regard to subject matter of the enquiry. On 12.11.2003 the petitioner's representative appeared and gave an application dated 12.11.2003 that unless specific query is given on which petitioner, was required to reply, it is difficult to place any stand. The petitioner also mentioned in the letter that the Writ Petition No. 5133 M/B of 2003 filed by the petitioner challenging the Government notification dated 26.11.2003 is pending before the Allahabad High Court. 15th November, 2003 was fixed for placing the stand of the petitioner. The Secretary of the Commission vide letter dated 12.11.2003 informed that the main question relating to contract settlement of Taj Express way project will be relating to concession agreement

and Bid document. On 13.11.2003 an application was given by the petitioner's representative praying that time is too short therefore, date may kindly be fixed after seven days. Another application dated 14.11.2003, was given personally by the representative of the petitioner on 15.11.2003 praying, that further proceedings be adjourned for 15 days. It was also requested that specific query may kindly be issued to the petitioner so that the petitioner can submit reply. On 15.11.2003 the Commission passed an order refusing to allow the prayer for granting fifteen days' time. It was observed in the order that it is open to the petitioner to avail the opportunity already granted while proceedings are still continuing. It is also relevant to note that on 13.11.2003 the application was filed by the petitioner in the present writ petition praying that further proceedings before the Single Member Commission of Inquiry be stayed. The application was taken by us on 14.11.2003 on which day request was made on behalf of the State for adjournment. Accordingly the matter was fixed for 18.11.2003. On 18.11.2003 again request was made on behalf of the Advocate General and the matter was again fixed for 20.11.2003. On 20th November, 2003 both the parties were heard at length on the application for staying the proceedings before the Commissioner by us and after completion of hearing we fixed next day, i.e., 21.11.2003 for delivery of orders. On 21st November, 2003 we disposed of the interim application directing that the Single Member Commission of Inquiry appointed by the notification dated 26.11.2003 may proceed with the enquiry but the report be not submitted until further orders of this Court. On 21st November, 2003 itself the Commission's report is said to have been submitted to the State Government. On 8th December, 2003 learned Advocate General appearing on behalf of the State respondents filed report submitted by the Commission of Inquiry in a sealed cover which was directed to be kept on record in the custody of the Registrar General. Notices were also issued to the respondent No. 2 by this Court which was duly served. Learned chief standing counsel has filed counter-affidavit also on behalf of the respondent No. 2 to which rejoinder- affidavit has also been filed.

5. The report of the Single Member Commission of Inquiry was opened from the sealed cover on 12.4.2004, which was also perused by the counsel for both the parties.

6. Sri Rakesh Dwivedi, Senior advocate appearing for the petitioner made following submissions in support of the writ petition :

(1) Notification dated 26.9.2003 is not in accordance with Section 3 of the Act since it did not contain any definite matter of public importance requiring appointment of the Commission.

(2) The Commission while submitting its report has not complied with the provisions of Sections 8B and 8C of the Act. No notice was given to the petitioner within the meaning of Section 8B of the Act. Notice dated 6.11.2003 cannot be said to be notice u/s 8B. Further even the notice dated 16.11.2003 does not comply Rule 5 of the Commissions of Inquiry (Central) Rule, 1972. No reasonable

opportunity was given to the petitioner by the Commission hence the entire enquiry is vitiated and the report is liable to be quashed on this ground alone.

(3) That Commission has committed error, in rejecting the prayer of the petitioner for adjournment of the proceedings as made on 15.11.2003. An application for adjournment was given personally on 15.11.2003. The order rejecting the prayer for adjournment on 15.11.2003 was never communicated to the petitioner so that the petitioner could have availed the opportunity of participation in the enquiry.

7. Sri Sudhir Chandra, learned senior advocate appearing for the respondents has emphatically refuted the submissions raised by the counsel for the petitioner. Sri Sudhir Chandra made following submissions :

(1) The petitioner has no cause of action to file the writ petition since the Inquiry Commission can at best be treated as only fact finding body whose report has no binding affect. The basis of the writ petition that the report will prejudicially affect the reputation of the petitioner is unfounded and no writ can be issued on above ground.

(2) The notification dated 26.9.2003 contained definite matters for the enquiry, the State Government fully complied the provisions of Section 3 and there was no error in the notification issued by the State Government.

(3) That Commission had given full opportunity to the petitioner. Notice dated 6.11.2003 was issued to the petitioner which is ample compliance of the provisions of the Act and the Rules.

(4) The State Government has full authority and jurisdiction to direct for fact finding enquiry through Sri Vijay Shanker Mathur communicated by he letter dated 25.1.2004. The petitioner has no right to object the fact finding enquiry initiated by the State Government and the prayer of the petitioner for quashing the letter dated 25.1.2004 is misconceived.

8. We have considered the submissions and perused the record including the report of the Inquiry Commission.

9. Before coming to the submissions raised by the counsel for the petitioner, it is necessary to consider submissions of the learned counsel for the State that the petitioner has no cause of action to file this writ petition either challenging the notification or the Commission's report. Elaborating his submission Sri Sudhir Chandra contended that the Commission's report is only fact finding report which itself does not prejudicially affect the rights of the petitioner and it is for the State Government to decide to take action on the report or not. Submission is that the basis given in the writ petition that the petitioner's reputation will be prejudiced is misconceived and no writ can be issued on the ground that the reputation will be affected. The submission raised by the counsel for the State Government need not detain us since this question has already been considered and answered by the Apex Court in two decisions namely, Smt. Kiran Bedi Vs.

Committee of Inquiry and Another, and State of Bihar Vs. Lal Krishna Advani and Others, . In the case of State of Bihar v. Lal Krishna Advani and Ors. (supra) the Apex Court repelled the similar submission in paragraph 9 which is extracted below :

"9. Shri Dinesh Dwivedi, learned counsel appearing for the appellant submits that since no action has been taken against respondent 1 so far, in pursuance of the report of the Inquiry Commission there was no occasion for him to move the Court in the matter. It was not the appropriate stage to raise any grievance by filing a petition challenging certain observations made by the Commission of Inquiry. The petition was thus premature. We feel that it may not be necessary for a person to wait till certain action is initiated by the Government considering the report of the Inquiry Commission where the observations made by the Commission are such which militate against the reputation of a person and particularly, without giving any chance to such a person to explain his conduct. It would be open for him to move the Court for deletion of such remarks made against him violating the provisions of Section 8B of the Act."

10. Section 8B itself attaches importance to the reputation of any person since the provision itself provides that it is mandatory for the Commission to give a reasonable opportunity to a person whose reputation is likely to be prejudicially affected by the enquiry. Section 8B itself makes it clear that the person whose reputation is likely to be prejudiced by the enquiry is treated as personally interest and affected in the enquiry and a writ petition at the instance of any such person cannot be said to be not maintainable. The submission raised by Sri Sudhir Chandra thus cannot be accepted.

11. The first submission raised by the counsel for the petitioner is that the notification does not give any definite matter of public importance. Paragraph 3 of the notification dated 26.9.2003 provides ;

"3. The Commission shall inquire into and report on the said matter in respect of following points :

- (1) to ascertain the facts of making the project,
- (2) to ascertain the facts of deciding procedure, terms and conditions of tenders for the project,
- (3) to ascertain the facts and position of transparency into action taken in the project,
- (4) to suggest what kind of action to be taken in future to remove the shortcomings of the project."

12. The bare look of the contents of the notification makes it clear that various items have been specified for inquiry with regard to Taj Express way project. It cannot be said that the notification does not refer to any definite matter of public importance. Notification cannot be said to be not covered by Section 3 of the Act.

The first submission of Sri Dwivedi cannot be accepted.

13. The second and third submissions of the counsel for the petitioner being inter-related, are being considered together. The thrust of argument of Sri Dwivedi is that the Commission has not followed procedure, which can be said to be in consonance with the provisions of Sections 8B and 8C of the Act and Rule 5 of 1972 Rules. The submission is that the Commission was appointed vide notification dated 26.9.2003 and the first notice issued to the public in general to give information was published on 8th October, 2003 whereas the Commission could issue notice to the petitioner only on 6.11.2003 for giving its stand. The Commission took about five weeks" time in issuing notice to the petitioner and from the date of notice within a fortnight the report has been submitted without giving reasonable opportunity to the petitioner. Before considering the submission of the petitioner any further it is necessary to take a note of relevant statutory provisions governing the procedure of the enquiry. Section 4 of the Act provides that the Commission shall have the powers of a civil court with regard to matters included in Section 4. Sections 8B and 8C which were added in the Act vide Act No. 79 of 1971 which are relevant for this case, are extracted below :

"8B. Persons likely to be prejudicially affected to be heard,-- If, at any stage of the inquiry, the Commission,--

(a) considers it necessary to inquiry 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 defence :

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

8C. Right of cross-examination and representation by legal practitioner.--The appropriate Government, every person referred to in Section 8B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission,--

(a) may cross-examine a witness other than a witness produced by it or him ;

(b) may address the Commission ; and

(c) may be represented before the Commission by a legal practitioner or, with the permission of the Commission, by any other person."

14. After amending the Act by Act No. 79 of 1971 rules were framed by the Central Government namely the Commission of Inquiry (Central) Rules, 1972. Rule 4 of the Rules provides for the issue and service of summons. The summons are required to be issued by the Commission to the persons whose attendance before it may be required either to give evidence or to produce document. Rule 5

deals with the procedure of Inquiry. Sub-rule (1) to Sub-rule (5) of Rule 5 of the Rules being relevant for the present case are extracted below :

"5. Procedure of Inquiry.--(1) A Commission may sit in public or in private as it thinks fit :

Provided that a Commission shall sit in private on a request being made by the Central Government in that behalf,

(2) A Commission shall, as soon as may be after its appointment--

(a) 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 ;

(b) issue a notification, to be published in such manner as it may deem fit, inviting all persons acquainted with the subject-matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification ;

(3) Every statement furnished under Clause (a) of 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 ;

(4) Every person furnishing a statement under Clause (a) of Sub-rule (2) shall also furnish to the Commission along with the statement a list of the documents, if any, on which he proposes to rely and forward to the Commission, wherever practicable the originals or true copies of such of the documents as may be in his possession or control and shall state the name and address of the person from whom the remaining documents may be obtained.

(5)(a) A Commission shall examine all statements furnished to it under Clause (b) of Sub-rule (2) and if, after such examination, the Commission considers it necessary to record evidence, it shall first record the evidence, if any, produced by the Central Government and may thereafter record evidence in such order as it may deem fit :

(i) the evidence of any person who has furnished a statement under Clause (a) of Sub-rule (2) and whose evidence the Commission having regard to the statement, considers relevant for the purpose of the inquiry ; and

(ii) the evidence of any person whose evidence, in the opinion of the Commission, is relevant to the inquiry :

Provided that the Commission may dispense with the attendance of any person for the purpose of giving evidence before it, if in its opinion--

(i) such attendance cannot be enforced except by causing undue hardship or inconvenience to that person ;

(ii) such attendance should be dispensed with for any other sufficient reason to

be recorded by it in writing.

(c) If, after all the evidence is recorded under Clause (a) of Sub-rule (5), the Central Government applies to the Commission to recall any witness already examined or to examine any new witness, the Commission, if satisfied that it is necessary for the proper determination of any relevant fact to do so, shall recall such witness or examine any such new witness."

15. Sub-rule (2) of Rule 5 as quoted above provides that a Commission shall, as soon as may after its appointment, 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 and also to issue notification, to be published in such manner inviting all persons acquainted with the subject matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification.

16. Rule 5, Sub-rule (2) thus contemplates two notices. The first notice to every person who in the opinion of the Commission is to be given opportunity of being heard in the inquiry, to furnish a statement and the notice to public in general. From the scheme of Sub-rule (2) it is clear that the intendment is to issue notice as mentioned in Clauses (a) and (b) as soon as after its appointment. In the present case the Commission was appointed on 26.9.2003 although the notice under Sub-rule (2) (b) is said to be issued on 7.10.2003 but notice to the petitioner under Rule 5 (2) (a) was issued only on 7.11.2003, i.e., after about more than five weeks from the constitution of the Commission. The notice which was issued to the petitioner on 6.11.2003 has been brought on the record by the rejoinder affidavit filed by the petitioner as Annexure-1. A perusal of the notice indicates that the notice after setting out the contents of the notification dated 26.9.2003 states in paragraph 2 "During the examination of the records made available to the Commission, it transpires that the aforesaid job work/ construction work has been assigned to your Company. Since, the Commission is seized of the matter, you are hereby given an opportunity to place your stand in the matter on 12th November, 2003 with regard to the subject matter at 11.00 a.m. In the office of the Commission." Although the notice does not refer the provision under which it was issued but a perusal of the contents make it clear that the notice is referable to Rule 5 (2) (a) of the Rules. The notice only requires for placing the stand of the petitioner. At this juncture it is relevant to consider as to whether there is difference between the notice as contemplated under Rule 5 and the opportunity as contemplated u/s 8B. From the perusal of Rule 5 (2) (a) and (b) it is clear that the said notices are issued to every person who in the opinion of the Commission should be given opportunity of being heard in the inquiry to furnish to the Commission the statement relevant to such matter as may be specified in the notice. Sub-rule (b) required notification to be published inviting all persons acquainted with the subject-matter to furnish the Commission with a statement. The object of Sub-rule (2) is to elicit as much as information

for purposes of inquiry for which the Commission has been constituted. At the stage when the notice is being issued under Sub-rule (2) the Commission is not necessarily to determine as to whether the persons who are being called to give statement may be persons whose conduct and reputation may be required to be examined by the Commission or not. Further, the notice under Sub-rule (2) has to be issued as soon as may be possible after the appointment of the Commission, Thus, the notices under Sub-rule (2) (a) and (b) are to be issued immediately after the constitution of the Commission for purposes of eliciting maximum information. The object and purpose of Rule 2 (a) and (b) is entirely different from that of Section 8B. Section 8B provides that at any stage of the inquiry if the Commission considers it necessary to inquire the conduct of any person or is of the opinion that reputation of any person is likely to be prejudicially affected in the inquiry, the Commission may give a reasonable opportunity to the person of being heard in the inquiry and to produce evidence in defence. Section 8B thus contemplates opportunity when conduct of any person is required to be enquired or the reputation of any person is likely to be prejudicially affected. This section further mandates that a person covered u/s 8B has to be given a reasonable opportunity of being heard in the enquiry and to produce evidence in his defence. The Apex Court while considering Section 8B of the Act in the case of State of Bihar v. Lal Krishna Advani and Ors. (supra) laid down in paragraphs 7 and 8 as follows :

"7. The provisions as contained u/s 8B of the Act quoted above, was brought into the statute book by amending Act 79 of 1971.

8. It may be noticed that the amendment was brought about, about 20 years after passing of the main Act itself. The experience during the past two decades must have made the Legislature realise that it would but be necessary to notice a person whose conduct the Commission considers necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially affected by the inquiry. It is further provided that such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Thus, the principles of natural justice were got inducted in the shape of statutory provision. It is thus incumbent upon the Commission to give an opportunity to a person, before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Needless to emphasis that failure to comply with the principles of natural justice renders the action non est as well as the consequences thereof."

17. It is also relevant to note that the letter dated 12.11.2003 given by the Secretary of the Commission clarifies that on what subject matter the stand of the petitioner is required to be given. Thus, in view of the above it is clear that the notice dated 6.11.2003 issued to the petitioner was a notice under Rule 5 (2) and cannot be said to be opportunity as contemplated u/s 8B, Section 8B mandates the Commission to give reasonable opportunity of being heard in the inquiry and to produce evidence in his defence. Notice dated 6.11.2003 does not

even suggest that the petitioner has to give any evidence in his defence. Section 8B uses the expression "reasonable opportunity of being heard" and "to produce evidence in his defence." Reasonable opportunity of being heard implies making a person aware of the allegation against him and to give opportunity to him to effectively represent his case. The opportunity to produce evidence in his defence also presupposes that the person is at least made aware of the allegations against the said person so that he may effectively exercise. Notice dated 6.11.2003 which called on the petitioner to give its stand cannot be treated to be compliance of opportunity as contemplated by Section 8B of the Act.

18. It is also relevant to note that Rule 5 (2) (a) of Rules, 1972 contemplates issue of notice to a person to furnish to the Commission a statement relating to such matter as may be specified in the notice. The notice dated 6.11.2003 mentions the contents of notice dated 26.9.2003 and required the petitioner to place his stand in the matter. Placing the stand was nothing more than furnishing the statement as contemplated under Rule 5 (2) (a) of Rules, 1972. The clarification issued by the Secretary vide its letter dated 12.11.2003 was only specification of matters required to be mentioned in the notice within the meaning of Rule 5 (2) (a) of Rules, 1972. The notice dated 6.11.2003 thus cannot be treated to be compliance of Section 8B and it was simply a notice under Rule 5 (2) (a) of Rules, 1972. Further as observed above, the notice was for placing the stand and not for producing evidence in defence. The request made by the letter of the petition dated 12.11.2003 was a request made for specifying the matter with regard to which statement was called for. In the letter dated 12.11,2003 following request was made by the petitioner :

"We have been called upon to place our stand, without disclosing or specifying any specific query on which our clarification is required. Unless we receive any query on which you feel our stand is required, it is extremely difficult to place any stand."

19. Similarly the clarification given by the Secretary in its letter dated 12.11.2003 was also specification of the matter as contemplated to be mentioned in the notice under Rule 5 (2) (a) of Rules, 1972. The clarification given by the Secretary in its letter dated 12.11.2003 was to the following effect :

"On the request of Mr. Lovkesh Sawhney, counsel, the Commission given an opportunity to place their stand on 15th November, 2003 at 11.00 a.m. It is also made clear to the representative of M/s. Jaiprakash Industries Ltd. that the main question relating to the contract settlement of the Taj Express Way Project will be relating to the Concession Agreement and Bid document."

20. In view of the above facts it is clear that the notice issued to the petitioner dated 6.11.2003 was -a notice under Rule 5 (2) (a) asking the petitioner to give their stand, which was nothing but statement as contemplated under Rule 5 (2) (a).

21. It is also necessary to be considered as to whether the petitioner in the facts

of the present case was entitled to a notice u/s 8B. As noted above, notice u/s 8B is contemplated in two eventualities, i.e., when it is necessary to enquire into the conduct of any person or the Commission is of the opinion that the reputation of any person is likely to be prejudicially affected by the enquiry. The enquiry report filed on 21.11.2003 makes various adverse observations against the petitioner. The report observes that there was some very strong under current between the beneficiary and the various officers involved in the process. The Commission report observed :

"The bidder, with the only object of securing illegal benefits from the project, misrepresented his financial arrangement, and the land which could be released only after arranging of finances from the Phase one, was taken as input for establishing financial arrangement."

22. At several places in the report hidden understanding between the beneficiary and the State Government Officials and the authorities have been mentioned which gives an impression that extraneous considerations were present in the acceptance of the tender. The report further observes :

"The record shows that the dictates/command of the bidder/ master for identifying and providing prime 500 acres land of NOIDA was carried out by the authorities who otherwise were responsible Officers of the TEA as well as the State Government."

23. The various observations in the report cast aspersions on the conduct of the petitioner, and also seriously prejudiced the reputation of the petitioner. From the perusal of the Commission's report it cannot be denied that opportunity u/s 8B was necessary in the facts of the present case. Opportunity u/s 8B also entitles a person to exercise various rights as provided u/s 8C of the Act. In view of what has been stated above, it is amply proved that no opportunity was given to the petitioner within the meaning of Section 8B and submission of the report against the petitioner without giving reasonable opportunity to the petitioner of hearing and to lead evidence in his defence vitiates the enquiry report.

24. Apart from the above, from the sequence of events we are satisfied that the Commission has not given reasonable opportunity of being heard to the petitioner as mandated by Section 8B. The first notice which was issued to the petitioner was dated 6.11.2003 although the Commission was constituted on 26.9.2003. As noted above Rule 5 (2) provides for issue of the notice as soon as may be possible after the constitution of the Commission. The Commission in the notification dated 26.9.2003 was required to submit its report within sixty days. The Commission did not choose to issue notice to the petitioner till 6th November, 2003, i.e., more than five weeks after constitution of the Commission. The Commission issued notice on 6.11.2003 fixing 12.11.2003 as first date to the petitioner to appear and give its stand. On request of the petitioner 15.11.2003 was fixed on which date representatives of the petitioner appeared before the Commission and gave an application for adjournment of the

proceedings. It was again stated that the specific query may be issued so that the petitioner may submit reply. The petitioner also informed that the application for interim relief filed by the petitioner in this writ petition came up for hearing on 14.11.2003 and on the request of the State it was adjourned to 18th November, 2003. On 15.11.2003 Commission refused the prayer for adjournment of the proceedings for fifteen days. Copy of said order refusing adjournment has been annexed as Annexure C. A. 5 along with the counter-affidavit filed by the respondent No. 2. The Commission has observed in the order, that on 15.11.2003 the letter dated 14.11.2003 was handed over in the office of the Commission praying for fifteen days" time in the matter but no body appeared to press the application. Petitioner has submitted the application personally on 15.11.2003 which fact is not denied. The observation that the application was not pressed does not appear to be correct. When the application has been submitted in person praying for adjournment it cannot be said that application has not been pressed. In fact even before the submission of the application on 15.11.2003 petitioner had already sent a letter on 13.11.2003 praying that the time is too short to collect necessary information. 12th November, 2003 was the first date for the petitioner which was admittedly adjourned for 15.11.2003 and on 15.11.2003 the adjournment was refused. The Commission has not chosen to issue notice to the petitioner earlier and it was issued after five weeks. Some more opportunity was required to be given to the petitioner. The order refusing adjournment also observed "It is open for the Company to avail of the opportunity already granted during the period while proceedings are still continuing at the office of the Commission at NOIDA". The petitioners have stated on affidavit that although all information and letters were communicated to the petitioner but this order dated 15.11.2003 was never communicated and for the first time the petitioner came to know through the counter-affidavit. The observation by the Commission that it is open to the Company to avail the opportunity already granted cannot be said to satisfy the requirement of Section 8B.

25. We have also perused the report of the Commission (which does not bear any date). The letter which was sent by the Commission to the Registrar of this Court to be placed before the Bench, dated 9.3.2004 mentions that the report was submitted on 21.11.2003, i.e., the date when we pronounced our order directing the Commission not to submit the report. From perusal of the report it is clear that the Commission has not examined any witness nor there is reference of conducting any proceedings after 15.11.2003 when the request of the petitioner for adjournment was rejected. As observed above, the opportunity u/s 8B is to be given at the stage when the Commission is satisfied that the conduct of a person is required to be enquired or reputation of a person is likely to be prejudicially affected.

26. Admittedly the petitioner could not even give their stand before the Commission which was required to be given on 15.11.2003 on which date the request for adjournment was refused. No further opportunity is seen to have

been given. Taking into consideration over all facts and circumstances of the case we are satisfied that the petitioner was not given reasonable opportunity of being heard and opportunity to produce evidence in his defence. Thus, the report submitted by the Commission is in violation of the mandatory and statutory requirements.

27. In view of foregoing discussions the Inquiry Commission report submitted on 21.11.2003 cannot be sustained and is hereby quashed,

28. Now there remains the prayer of the petitioner for quashing the letter dated 25.1.2004 issued by the Secretary, Handloom & Environment, Government of Uttar Pradesh to Sri Vijay Shanker Mathur informing him about the appointment to enquire certain matters referred to therein. The said letter shows that the State Government on administrative side has taken a decision to enquire certain matters. There cannot be any fetter in the power and jurisdiction of the State Government to direct any fact finding enquiry in any matter of public importance. The State Government is fully free to enquire any matter. The submission of Sri Shudhir Chandra that there is no error in the action of the State Government appointing Sri Vijay Shanker Mathur to conduct fact finding enquiry with regard to subject matter as indicated in the, letter has substance. The prayer of the petitioner as made in the writ petition for quashing the said letter is refused. In fact Sri Dwivedi has not stressed on the said prayer in the writ petition but stated that if any such enquiry is held petitioner be given opportunity.

29. We, however, make it clear that quashing of report of single Member Commission submitted on 21.11.2003 does not fetter the power of the State Government for appointing a Commission of Inquiry u/s 3 of the Act or to direct for any other kind of enquiry regarding the subject in issue.

30. In the result we partly allow the writ petition. The single member Commission report submitted on 21.11.2003 is quashed, rest of prayers made in the writ petition are refused. The parties shall bear their own costs.