

(1996) 05 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 5790 of 1995

Lal Krishna Advani (L.K. Advani) and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3, 8B
Constitution of India, 1950 — Article 14, 21, 226, 227

Citation : AIR 1997 Patna 15 : (1996) 1 PLJR 895

Hon'ble Judges : Ravi Nandan Sahay, J;N. Pandey, J

Bench : Division Bench

Advocate : Arun Jaitley, Ravi Shanker Prasad and Sujeet Kumar, for the Appellant; D.D. Thakur General, Shashi Bhushan Kumar, J.C. to A.G., Abdul Manan Khan, Nasrul Hoda Khan, Shakeel Ahmad Khan Khurshid Alam, Rajeeva Roy, Anil Kumar Upadhyay, Shailendra Kumar Singh and Asfar Hasan, for the Respondent

Judgement

N. Pandey, J.—This is petition under Articles 226 and 227 of the Constitution of India to invoke the writ jurisdiction of this Court for quashing some of portions of the report of the two Members of the Bhagalpur Riot Inquiry Commission, which reflect stigma and are prejudicial to the conduct and reputation of petitioner No. 1 as also to restrain respondents 1 and 2 from taking any action on the basis of offending portions of the report or any insinuation therein,

2. In order to appreciate respective submissions made by learned counsel for the parties, it would be useful to give, in brief, the circumstances, leading to appointment of the Commission and also to quote the terms of reference:

In the year 1989, due to certain communal clashes and riots, several persons of both the communities lost their lives and property. Therefore, the State Government having regard to enormity of the communal disturbances and magnitude of the riots, decided to constitute a Commission of Inquiry under the Commissions of Inquiry Act, 1952 (hereinafter referred to as the "Act") to

enquire into the cause for communal disturbances and to fix responsibility against the persons who are found responsible. Accordingly, in exercise of the power conferred by Section 3 of the Act," the State Government while appointing Hon"ble Mr. Justice Ram Nandan Prasad, a retired Judge of the High Court, as sole member of the Commission, referred the following terms of reference:--

a) to enquire into the facts and circumstances leading to communal disturbances in the district of Bhagalpur and adjacent areas on 24th October, 1989 and thereafter;

b) to enquire into whether these disturbances were pre-planned and, if so, the elements responsible for the same;

c) to enquire whether measures taken by the District Administration to prevent and deal with the said disturbances were timely and adequate, and to fix responsibility for lapses if any, in this regard.

d) to recommend measures for preventing recurrence of such disturbances;

e) to consider such other matter relating to these communal disturbances and make such recommendations as the Commission may think it proper and necessary.

3. In fact, at initial stage, Hon"ble Mr. Justice Ram Nandan Prasad was appointed as sole member of the Commission but subsequently, by a notification dated 20-9-1993, Hon"ble Mr. Justice Ram Chandra Prasad Sinha and Hon"ble Mr. Justice S. Shamsul Hasan (both retired Judges of this Court) were also appointed.

4. All the parties to the Commission filed written statements and examined witnesses. Having regard to the allegations against certain Government officials, the Commission also considered necessary to enquire into their conduct etc., therefore, notices were issued against such officials in terms of Section 8B of the Act. But at the instance of some of the Government officials, validity of such notices were questioned before this Court in C. W. J. C. No. 5203 of 1993 and ultimately, after hearing the parties, operations of the impugned notices were stayed. But while the said writ application was pending, two separate enquiry reports were submitted by the Commission, i.e. one signed by the two members, namely, Hon"ble Ram Chandra Prasad Sinha and Hon"ble S. Shamsul Hasan on 11-2-1995 and the other by Hon"ble Ram Nandan Prasad, Chairman of the Commission on 28-2-1995.

5. Before turning to rival contentions of the parties, it would be appropriate to clarify that we are not concerned with the correctness or otherwise of either of the two versions. In fact whatever facts we shall notice hereafter are with a view to find out whether in facts and circumstances of the case, provisions of Section 8B of the Act are attracted.

6. I am conscious that a Commission of Inquiry appointed under the provisions of the Act is simply a fact finding body, therefore, its report is not binding on the

Government. As such, any attempt to find out the correctness or otherwise of such a report may be beyond the scope of Articles 226 and 227 of the Constitution of India. I am also reminded that the question involved in this case is undoubtedly a delicate and sensitive, therefore, a great caution has to be observed in dealing with such matters.

7. Thus, being alive with such limitations, the petitioners have also confined their prayer for expunging certain remarks against their conduct and reputation which they have extracted in paragraph 46 of the petition from the report of the two Members of Enquiry Commission. Those remarks are reproduced hereunder:--(i) Paragraph 57 ".....Thus Jan-sangh disappeared and became a part of the Janta Party. Along with people like Morarji Dcsai. Charan Singh and Mr. Jagjiwan Ram, Mr. Advani and Mr. Vajpayee joined the Government and fanatic like the Shahi Imam and Mr. Shahabuddin also supported the Government. Mr. Advani became Information and Broadcasting Minister and Vajpayee the Minister of External Affairs, while in-vadiously Mr. Advani was spreading the message of his cult through the official media....."(ii)".....The Lok Nayak hoped that by coming into the main stream the communal forces would get totally absorbed and will forget their ideology of hate and detrimental nationalism but that was not to be. The Janta Party was split and the BJP was born in place of the old Jan Sangh. The main reason apart from the internal squabbling of the politicians of the Janta Party was the strong octopus like grip and influence of the R. S. S. on the members of the formal Jansangh....." (iii) Paragraph 63 ".....Mr. Advani really spilled the beans and revealed the real intention of the BJP in his statement reported in the PANCHJANYA and copied by the "Times of India" dated January 30th, 1993" "Speaking for ourself, we were distressed to read that statement not out of fear because our life and our religion are both safe in this country but because of an eminent national leader should resort to threat of rioting unless the norms set by him are followed....." (iv) Paragraph 625 ".....The demand by him that Muslim and Christian should style themselves as Mohammadi Hindu and Christian Hindu etc. is a proof of this depraved anachronistic ideology....." (v) ".....One became the protector of Islam by peddling the slogan of "Islam in Danger" the other is exactly doing the same thing by peddling the concept of protecting the Hindu.....". (vi) Paragraph 626 ".....The Islam which Mr. Jinna and the Muslim League tried to save led to the chaotic condition in Pakistan. Hinduism or Sanatan Dharma which Mr. Advani is trying to save is creating the same chaotic condition in India....."

8. Besides the aforesaid, reference was also made to certain other paragraphs of the report which according to the petitioners, are equally damaging and prejudicial to the conduct and reputation of petitioner No. 1.

9. We have already indicated that we are not at all concerned with the correctness of the findings or otherwise of the reports. Therefore, in the facts and circumstances of the case, only question relevant for consideration is whether in absence of a notice u/s 8B of the Act such findings which cast stigma

against the conduct and prejudicial to the reputation of petitioner No. 1 can sustain. There cannot be any doubt that any judgment of a Court or report of a tribunal empowered by law to adjudicate and decide matters affecting rights of parties. cannot be assailed unless law permits it to be questioned or interfered with. But expunction of irrelevant and uncalled for remarks will not amount to alteration or amendment of report or judgment. No doubt such exercise of power may affect a judgment or order to some extent but having regard to paramount importance of securing the ends of justice, the High Court will have no option but to exercise such power. Reference in this regard can be suitably made to a relevant passage from the judgment of the apex Court in the case of Dr. Raghubir Sharan Vs. The State of Bihar, as follows (at p. 10 of AIR):

"26. xx xx

As already stated, expunction of irrelevant remarks does not amount to the alteration or amendment of a judgment or an order of a subordinate Court. No doubt, the exercise of such power will have the effect of taking out of the judgment or order something which was there before and thus in a limited way to -interfere with the content of the document embodying the judgment or order. But bearing in mind the paramount importance of securing the ends of justice the High Court must be deemed to have such power."

10. Only contention on behalf of the petitioners is that in absence of a reasonable opportunity as required u/s 8B of the Act, any finding which casts stigma and as person on the conduct of petitioner No. 1 and/or prejudicial to his reputation has to be declared illegal, without jurisdiction and is utter disregard to the principles of natural justice. Because a bare reference to the provisions of Section 8B of the Act would show that a Commission of inquiry appointed under the provisions of the Act, is bound to give a reasonable opportunity to the person or persons whose conduct is sought to be enquired into or reputation of such person or persons is likely to be prejudicially affected by the inquiry. Therefore, having regard to these backgrounds, it would be apt to notice the relevant provisions of Section 8B of the Act in extenso:--

"8B. Persons likely to be prejudicially affected to be heard.-- 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 defence :

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

11. The scope and ambit of the statutory requirement of Section 8B of the Act has been noticed by the apex Court on different occasions including that in the case of The State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, . It is

well settled when any judicial authority, quasi judicial authority or any other authority including administrative authority, takes a decision which may have civil consequences and affects right of a person or persons, the principles of natural justice would at once come into play. The role of natural justice requires that a person against whom an allegation is being enquired into has to be given a chance of hearing before he is condemned. It cannot be denied that reputation of any individual is an important part of the right to life. It is, therefore, in recognition of such importance, the legislatures inserted Section 8B of the Act by virtue of amending Act 79 of 1971. The paramount importance of such requirement can be noticed from the judgment in the case of Smt. Kiran Bedi Vs. Committee of Inquiry and Another, where an observation from D. F. Marion v. Davis 55 ALR 171 was quoted in these words:--

"The right to enjoyment of a private reputation, un assailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property,"

12. In these backgrounds, it can be safely gathered that reputation is a part of fundamental right and personal liberty as guaranteed under Article 21 of the Constitution of India. Therefore, having regard to the importance of such a right, Section 8B of the Act casts a mandatory duty on the Commission to give a reasonable opportunity to the person whose conduct or reputation is likely to be prejudiced by such inquiry or the findings recorded therein. Under the safeguards as provided u/s 8B a person whose conduct or reputation is going to be criticised has got a legitimate right to defend his/her case and cross-examine witness before such findings are recorded.

13. Therefore, apart from the individual interest of the person concerned, with a view to have a public confidence as well, it is just and proper to allow such person to have full satisfaction, while participating in the proceeding where his or her conduct was being criticised. While dealing with identical question with regard to scope of Section 8B of the Act, the Andhra Pradesh High Court in the case of Sri K. Vijaya Bhaskar Reddy Vs. Government of Andhra Pradesh and others, held thus (at p. 71 of AIR) :--

"31. xx xx

In out view such a report would neither satisfy the purposes of the Act or do justice to the cause and the rights of the persons whose interest the Parliament thought it fit to protect by enacting Ss. 8B and 8C of the Act. From the point of view of public confidence as well as from the point of view of protection of rights of the category of persons dealt with in Sections 8B and 8C the impartiality of the Commission is of paramount importance. It is but just and proper to allow such persons to "raise" the plea of rule against bias to have the satisfaction that the proceedings are conducted impartially, which will be commensurate with the spirit of the Act and will also inspire confidence in the public about the enquiry

conducted by the Commission, rather than to preclude them from raising the plea of bias, Giving our most anxious consideration to this question we are inclined to think that allowing-persons envisaged in S. 8B to raise the plea of bias which is but a concomitant of the rule of natural justice before the Commission of Inquiry would be in tune with the spirit and the object of the Act."

14. In the case of N. Manoharan Vs. State of Tamil Nadu and Another, , the Court while examining the scope and object of Section 8B of the Act in such matters held thus (at p. 150 of AIR):--

"6. xx x x

Thus findings rendered in paras 4 (56) and 7(26) of the report of the Commission of Inquiry are in violation of Section 8B of the Act and Rules 7 and 10 of the Commissions of Inquiry (Tamil Nadu) Rules in that the appellant was not given an opportunity of being, heard at the enquiry, even though the findings rendered deals with his official conduct and affects his reputation. We have to, therefore, hold that no action could be taken purely on the basis of those findings. In this case, the findings have been taken as the sole basis for initiating disciplinary proceedings as against the appellant and the second respondent in the writ petition has been appointed as the Enquiry Officer for conducting the disciplinary proceedings."

15. While dealing with the scope of Section 10 of Jammu and Kashmir Commission Inquiry Act, 1962, which is in fact amalgam of Sections 8B of the present Act, in the case of The State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, , the apex Court while examining right of such person whose conduct incidentally came to be enquired into, held as follows (at p. 129 of AIR) :--

"If a Commission is set up to inquire directly into the conduct of person, the Commission must find it necessary to inquire into that conduct and such a person would, therefore, be one covered by Section 10. It would be strange indeed if the Act provided for rights of a person whose conduct incidentally came to be enquired into but did not do so in the case of persons whose conduct has directly to be inquired into under the order setting up the Commission. It would be equally strange if the Act contemplated the conduct of a person being inquired into incidentally and not directly. What can be done indirectly should obviously have been considered capable of being done directly."

16. In view of such authoritative pronouncements, there appears no doubt that a Commission of Inquiry appointed under the provisions of this Act is bound to give a reasonable opportunity to the person whose conduct is "sought to be enquired into or whose reputation is likely to be prejudicially affected by the report or a portion thereof.

17. Before proceeding to consider submissions made on behalf of the parties it would be appropriate to indicate that this petition has been kept confined only to

the extent reliefs have been sought for on behalf of petitioner No. 1. So far petitioners 2 and 3 are concerned, neither there is any allegation against them nor any finding has been recorded, whereas petitioner No. 3 was already represented before the Commission, therefore, no grievance can be made on behalf of these petitioners regarding non-service of notice as required u/s 8B of the Act.

18. Mr. Jaitley, learned counsel appearing for the petitioners submitted that from the above discussions it follows that necessary materials which were likely to affect the conduct or prejudicial to the reputation of petitioner No. 1 were never supplied. From a bare reference to the pleadings of parties and the impugned report, it would be evident that learned members have recorded findings against the conduct and reputation of petitioner No. 1 without any notice, as required u/s 8B of the Act. Therefore, to meet the ends of justice it would be appropriate to expunge such remarks from the report as also to restrain in the State Government from proceeding in any manner against petitioner No. 1 on such report.

19. It was contended that the findings of the Commission or adverse comments about the conduct of petitioner No. 1 while he was Minister during the coalition Government or about his statement as published in the PANCHJANYA are uncalled for and completely beyond the terms of reference of the Commission.

20. Admittedly, the riot in question took place at Bhagalpur and the surrounding areas in the year 1989. The statement of petitioner No. 1 was published in the PANCHJANYA in the year 1993. Therefore, even such statement was considered provocative, no riot or communal disturbances could have taken place in the year 1989 on such provocation. The members of the Commission were simply required to find out the circumstances leading to communal disturbances in Bhagalpur areas on 24th October, 1989. and whether such communal disturbances were preplanned, if so, who can be held responsible? Therefore, it was absurd to link the statement of petitioner No. 1 as published in PANCHJANYA with the alleged disturbances, which had already taken place in the year 1989. He further contended had the learned Members given opportunity to the petitioner before recording such a finding, he could have very well explained that his statement as published in the PANCHJANYA was neither provocative nor against the interest of any community and what was published in the Times of India was in fact a distorted version.

21. He submitted that admittedly no allegation whatsoever was made by the parties in their written statements nor there was any evidence to show that the petitioner No. 1 was in any manner responsible for the alleged incident. Therefore, there was no scope for the learned Members of the Commission to drag his name and cast aspersion, about his conduct and record findings which are prejudicial to the reputation.

22. Mr. Jaitley next contended that a bare reference to the Press statement of

one of the Members of the Commission as published in "Hindustan Times" on 12-9-1993, and 19-9-1993, i.e. immediately before his appointment as Member of the Commission, making derogatory observations against petitioner No. 1, would show that his mind was preoccupied. Therefore, findings of such authority regarding conduct or reputation of petitioner No. 1 cannot be free from bias. He contended that no public body can be regarded to act in bad faith for ulterior motive. Thus any action purporting to be of that body would certainly be held inoperative and motivated. That apart, the moment learned Members of the Commission are found travelling beyond the scope of reference and say something about the conduct and reputation of any person not being party to such proceeding it can be safely said that a fraud has been committed on such power and therefore, one is free to say that such findings are for ulterior purposes. It is well known that a judgment which is the result of bias and impartiality is nullity.

23. In support of such submission, learned counsel placed reliance to the following decisions of the apex Court in the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , Ranjit Thakur Vs. Union of India (UOI) and Others, and Kiran Bedi and Others Vs. Committee of Inquiry and Another, .

24. On the other hand. Mr. Thakur, learned counsel for the State Government as well as Mr. Shakeel Ahmad Khan, Mr. Asfar Hasan, Mr. Rajeev Roy and Mr. Nasrul Hussain Khan, who have appeared on behalf of respondent Nos. 8, 11, 10, and 7, contended that having regard to the facts of the case, at no point of time, it was considered necessary by the Commission to enquire into the conduct of petitioner No. 1 nor there was any statement containing allegation against him or evidence of the parties, which in the opinion of the Commission was prejudicial to his reputation. Therefore, it was not at all necessary to adopt recourse to Section 8B of the Act. Thus no grievance can be made that in absence of an opportunity as required u/s 8B of the Act, the report of the Commission vitiates.

25. It was further submitted that a report of a Commission has no statutory force unless action is taken by the Government on such report. Therefore, so long those formalities are complete, there cannot be any case of action to maintain the writ petition. In support of such submission, reliance was made to certain decisions of the apex Court in the cases of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, .

26. In my view, having regard to the facts in issue as well as the statutory requirements as incorporated u/s 8B of the Act, it will not be open to urge that unless the report is accepted by the Government or action taken, findings recorded by the Commission would not cause any prejudice to the conduct or reputation of the person concerned against whom such findings are recorded. Section 8B of the Act, as noticed above, commands the Commission that at any stage of inquiry, before recording a finding, which may cause stigma against the

conduct of the person concerned, or may be prejudicial to his reputation, a reasonable opportunity must be given. Therefore, even in the case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , it was held that a question whether or not any rule of natural justice has been contravened, should be decided not under any pre-conceived notions but in the light of statutory rules and provisions. The only limitation to exercise power under Articles 226 and 227 of the Constitution was noticed by the apex Court, where no such rule which can be said to have been contravened by a tribunal, was brought to the notice of the Court.

27. Mr. Shakeel Ahmad Khan as well as Mr. Rajeev Roy, while adopting the submissions of Mr. Thakur, on this issue, also referred to cases of N. Manoharan Vs. State of Tamil Nadu and Another, as well as R. Balakrishna Pillai Vs. State of Kerala, and submitted that unless action is taken by the Government on the recommendation of the Commission, there would be no scope to contend that any injury was caused to the concerned party because of certain findings recorded by the learned Members of the Commission. The proceeding before a Commission is not judicial or quasi judicial. It is only a fact finding authority. The inquiry is done to reach an ultimate administrative decision.

28. Undisputedly, a plain reading of Section 8B of the Act postulates mainly two situations:-- Clause (a) of the said Section applies when the conduct of any person is to be enquired into whereas Clause (b) applies to a case where reputation of a person is likely to be prejudicially affected. The recourse to the procedure u/s 8B is not confined to any particular stage and if not earlier, at any rate as soon as the Commission decided to record a finding which may be prejudicial to reputation of a particular person, issue of formal notice under the instant provision is sine qua non to fulfil the statutory requirement.

29. Therefore, the views expressed by the learned Advocates for the respondents, if accepted, may lead to an anomalous situation in appropriate cases. To illustrate, in a case where finding has been recorded by the Commission, holding a particular person responsible for the alleged incident. But the Commission for any reason, failed to adopt the procedure of Section 8B and held him responsible. Will it be possible to urge, since the Commission did not consider necessary to issue notice, the person concerned has no right to raise a voice that his fundamental right to protect reputation etc. as guaranteed under the Constitution, was infringed ? In my view, this was certainly not the object of the legislatures while enacting such a provision.

30. I have already noticed, a good reputation is an element of personal security and, therefore, protected by constitutional guarantee. If the Commission, therefore, failed to adopt the procedure as required u/s 8B, a person aggrieved by the findings, to the extent they affect conduct or reputation of such person, has got a right to raise plea that such finding was in utter disregard to the requirement of Section 8B of the Act. It is immaterial whether the Government proposes to take any action. Any adverse finding regarding conduct or reputation

of a person in a report of the Commission is, therefore, sufficient to attract the provision.

31. Though I have noticed that a report of the Commission of Inquiry per se has no legal force unless the same is accepted by the State Government, but a Court in appropriate cases, can issue mandamus forbearing the Government from taking action against the person concerned on such finding of the Commission. Reference in this regard can be suitably made to a case of Dr. Raghubir Sharan Vs. The State of Bihar, and to the case of N. Manoharan Vs. State of Tamil Nadu and Another, .

32. Mr. Thakur then contended that having regard to the terms of reference, the Commission had no option but to examine different aspects of the matter which lead to such communal clashes and also to suggest measures to prevent recurrence of such disturbances in future. Therefore, in these backgrounds, the Commission was required to, trace out reasons of certain past instances, which, in their opinion, might be a cause of such disturbances, besides intermediate causes of Bhagalpur riot. In these backgrounds, if the learned Members of the Commission noticed certain past incidents, including the statement of Mr. Advani in PANCHAJANYA, it cannot be alleged that such findings were with ulterior motive to cause harm to his conduct and reputation.

33. Mr. Thakur, further submitted that simply because one of the learned Members of Commission had made certain statements to the Press before his appointment, it cannot be alleged that he was carrying malice against Mr. Advani or his party. In a democratic set up, each individual has liberty within the constitutional framework to express views regarding any matter of public importance. Therefore, if the learned Member expressed his views, it would not be proper to allege that he was biased against petitioner No. 1.

34. It was submitted that comparison of Mr. Advani with Mr. Jinnah or a reference about his statement in PANCHJANYA by the learned Members of the Commission was not with a view to cause prejudice. At best, one can say that these are reflections of the view of the learned Members, but by no stretch of imagination, bias or prejudice can be alleged. Reference in this regard was also made to a decision of the Supreme Court in the case of State of Karnataka v. Union of India AIR 1978 SC and V. Narayana Rao and Another Vs. State of Andhra Pradesh and Another, .

35. Mr. Azfar Hasan, while supporting the views expressed by Mr. Thakur, further added that admittedly in order to suggest preventive measures to avoid such clashes, in future the Commission had to trace out the history or causes which lead to such riots from time to time. Therefore, it would be wrong to suggest that the learned Members were only required to trace out intermediate causes.

36. Mr. Thakur also contended that even it is held that certain findings or remarks of learned Members are beyond the terms of reference, the acceptance of their recommendation by the Government per se will not become illegal or

incompetent. Reliance was placed in this regard to a case of V. Narayana Rao v. State of A.P. (AIR 1987 AP 53J (FB) (supra). Relevant findings in this regard may be noticed herein below:--

"32. xxxxxxxxxxxxxx

It, therefore, cannot be said, that just because the M. R. Commission made certain recommendation beyond its purview, the acceptance of the said recommendation by the Government is per se illegal or incompetent. It is another matter to say that the recommendations of the Commissions are not based upon relevant material, or to say that the Government blindly accepted the said erroneous recommendations without any further investigation. This aspect we shall deal with presently, but so far as the first contention of the learned counsel for the petitioner is concerned, it is not possible to agree, that the Government acted illegally in accepting, or acting upon the said recommendations because those recommendations were outside the purview of the Commission."

37. In my view, it has been rightly contended on behalf of respondents that having regard to the terms of reference and to suggest measures for preventing recurrence of such disturbances, the Commission was required to trace out different causes which led to such disturbances from time to time. Therefore, while dealing with such complex questions, if the learned Members referred certain instances, no one can allege bias against them. It is another matter that findings of the learned Members are not based upon relevant materials.

38. But at the, same time, it cannot be ignored that while condemning a person whose conduct or utterances in the opinion of the commission was one of the cause for such disturbances in past, including division of country and compare that person with Mr. Advani to condemn his activities of utter-ences, the provisions of Section 8B would at once come into action for a reasonable opportunity to defend himself before being condemned. A bare reference to different authoritative pronouncements of the Apex Court, which I have already noticed, would indicate that Section 8B casts a mandatory duty on the Commission of Inquiry to extend reasonable opportunity to the person, whose reputation is likely to be prejudiced because of such findings. From the point of view of public confidence, as well as protection of rights of the category of persons dealt within Sections 8B and 8C, undisputedly, the impartiality of the Commission is of paramount importance. As has been held by the apex Court, in the case of State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, or Smt. Kiran Bedi Vs. Committee of Inquiry and Another, , rule of natural justice requires that a person against whom an allegation is being enquired into has to be given a chance of hearing before he is condemned.

39. Now I turn to the grievance of the petitioners about the findings of the learned Members regarding statement of Mr. Advani published in PANCHJANYA. It has been urged that such a statement of Mr. Advani in the year 1993 in no

circumstances could have provoked communal clashes in the year 1989 at Bhagalpur or the surrounding areas. Therefore, any finding in this regard to condemn Mr. Advani is uncalled for and has been made with ulterior motive.

40. In my view, it depends upon approach and thinking of a person how he reacts on a particular subject. The meaning of such statement can be interpreted in different ways. I have been rightly reminded by Mr. Thakur that in a writ jurisdiction under Article 226 of the Constitution, generally a Court is not required to find out the meaning or purpose behind such findings. " But it cannot be ignored if such statement is noticed or criticised with a view to condemn Mr. Advani, the principle of natural justice would at once come into action. Therefore, to protect right of an individual, as enshrined under Article 21 of the Constitution, it would certainly be a paramount factor before the Court for adjudication.

41. Therefore, having regard to above discussions and different authoritative pronouncements, some of them have already been noticed, namely, Venkayya Vs. Sriramamurthy and Others , N. Manoharan Vs. State of Tamil Nadu and Another, , Dr. Raghubir Saran v. State of Bihar AIR 1964 SC (supra), Sri K. Vijaya Bhaskar Reddy Vs. Government of Andhra Pradesh and others, and Smt. Kiran Bedi Vs. Committee of Inquiry and Another, , I am constrained to hold that the provisions of Section 8B of the Act is fully attracted to safeguard the role of natural justice. It has also been held that reputation of a person is a part of a fundamental right and personal liberty. It is not to be undermined that a person who is provided with an opportunity of being heard is given option to produce evidence, cross examine witnesses and furnish explanations in defence with regard to charges or findings about his reputation, which may prejudicially affect, if remain un rebutted. He must know or be told of the materials which were the basis of forming an opinion by the Commission.

42. Undisputedly under the Act no proforma has been prescribed to give notice to a particular person u/s 8B. But it is implicit if the Commission had collected certain materials either documents or statement of witnesses, on the basis of which it formed adverse opinion against the conduct or reputation of Mr. Advani, it was essential on their part to provide him an opportunity of being heard and to produce evidence in his defence with regard to the allegations of findings which, in case remain un rebutted, would certainly prejudicially affect his reputation.

43. With regard to all other aspects certainly petitioners have argued at length and alleged mala fide against the learned Members and have given their own interpretation. Therefore, I was indeed obliged to refer to some of the submission of the parties, particularly those which are the subject matter of attack in this writ application. But I have already indicated that we are not at all concerned with the correctness or otherwise of such statements.

44. Therefore, in view of the foregoing discussions, I am constrained to hold that no action can be taken against Mr. Advani purely on the basis of the findings of

the learned Members. It has been noticed that findings of the learned Members regarding conduct or reputation of Mr. Advani are in violation of the statutory requirements of Section 8B of the Act, therefore, would remain inoperative so far his case is concerned.

45. In the light of the aforesaid findings, the writ application is partly allowed and stands dismissed so far other petitioners are concerned. But in the facts and circumstances of the case, parties are left to bear their costs.

R.N. Sahay, J.

46. I have had the opportunity of considering the opinion prepared by my learned brother Justice Pandey. As the reasonings of that opinion and conclusions reached therein accord to substantial extent with my own views, I propose to say only a few words on one point that is on the crucial question whether a writ of certiorari or any appropriate writ can be issued against a body whose status is neither judicial, quasi-judicial or administrative, but merely advisory, deliberative and investigatory.

47. The scope and content of Section 3 of the Act and the nature and function of Commission appointed u/s 3 of the Commissions of Enquiry Act have been laid down in innumerable decisions of the Supreme Court and other High Courts. The earlier decision is of the Nagpur High Court in AIR 1954 71 (Nagpur) . The question that arose for consideration in that case was whether the Commission of Inquiry is a Court within the meaning of Contempt of Courts Act, 1952. It was held that the least characteristic that was required of a Court was the capacity to deliver a definitive judgment and the mere fact that the procedure adopted by it was of a legal character and it had the power to administer an oath would not impart to it the status of a Court.

48. B. P. Singh, C. J. (as he then was) observed in Para 12 of the judgment -

"an enquiry under the Commissions of Inquiry Act, 1952, on the other hand, is of wholly different character. There is no accuser, and no specific charges for trial; nor is the Government, under the law, required to pronounce, one way or the other, on the findings of the Commission.

The Commission in question was obviously appointed by the State 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" in ordering a departmental enquiry against its officers. It was, therefore, fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature."

49. The above statement of law was approved by a Bench of three Judges of the Supreme Court, though in another context, in *Brajnandan Sinha Vs. Jyoti Narain*, . The Nagpur decision as also the above Supreme Court decision were approved by a 7 member Bench of the Supreme Court in *State of Karnataka Vs. Union of India (UOI) and Another*, . In the decision of the Supreme Court in

Kehar Singh and Others Vs. State (Delhi Administration), it was observed as follows:

"The Commission under our Act is given the power to regulate its own procedure and also to decide whether to sit in camera or in public. A Commission appointed under the Act does not decide any dispute. There are no parties before the Commission. There is no lis. The Commission is not a Court except for a limited purpose. The procedure of the Commission is inquisitorial rather than accusatorial."

50. It was argued on behalf of the respondents that the inquiry as contemplated under the Act is neither judicial nor quasi-judicial and that writ in the nature of certiorari or mandamus does not lie because the function of the Commission of Inquiry was only to make recommendations to the Government, which are not enforceable *proprio vigore*. There can be no doubt that the Commission of Inquiry is not a Court and is not exercising judicial functions but the functions are not merely administrative in character. It is the duty of the Commission to record evidence of persons concerned and govern an objective finding.

51. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the Supreme Court observed that, as the function of the Commission was to make recommendations, which were not enforceable *proprio vigore*, there could be no question of usurpation of judicial functions. The Supreme Court further observed that the Commission had no power of adjudication in the sense of passing an order which could be enforced *proprio vigore*. It is, therefore, contended that as the findings themselves are not enforceable, the proceedings are not amenable to the writ jurisdiction of this Court.

52. In *Re criminal injuries compassionate Board (1967) 2 QB 864*, criminal injuries Compassionate Board was constituted under non-statutory scheme of Government for compassionation to victims of criminal acts/ violence. The Board followed judicial type procedure but the claimants had no legal enforceable right. It was held that certiorari will be maintainable if the adjudication was tainted with defects.

53. In *Rex v. Electricity Commissioners*" *London Electricity Joint Committee Co. (1920) Ex parte (1924) 1 KB 171*, the question arose whether a writ could issue against the Electricity Commissioners established by Section I of the Electricity (Supply) Act, 1919.

Under the Act the scheme that might be framed had no force or effect by itself. It has to be passed on to the Minister for Transport who might on firm or modify the scheme. Even then the scheme had no force. It had to be approved on a resolution passed by each House of Parliament, and then only the order passed by the commissioner had any force or effect. After discussing the case-law on the subject *BANKAS, L.J.*, concluded that there was abundant precedent for the Court taking action at the present stage of the proceedings of the Electricity Commissioners, provided it was satisfied that the Commissioners were

proceeding judicially in making their report, even though that report needed the confirmation of the Minister of Transport and of both Houses of Parliament before it became effective. The learned Judge also observed that under the Act the Commissioners were required to hold local inquiries for the purpose of giving interested parties the opportunity of being heard and that powers so far reaching, affecting as they did individual as well as property, were powers to be exercised judicially, and not ministerially. ATKIN L.J., stated the position thus :

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

The learned Judge further found as follows :

"In the provisions that the final decision of the Commissioners is not to be operative until it has been approved by the House of Parliament I find nothing inconsistent with the view that in arriving at that decision the Commissioners themselves are to act judicially and within the limits prescribed by Act of Parliament and that the Courts have power to keep them within those limits."

The above decision is an authority for the proposition that a Tribunal did not cease to function judicially, merely because the finding it was called upon to submit was subject to confirmation by some other body and did not take effect by itself.

54. In *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, the question that arose for consideration was whether the functions exercised by the Wage Board are administrative or judicial or quasi-judicial in character, because only in the latter event would their decision be amenable to the writ jurisdiction or to the special leave jurisdiction. Bhagwati, J. observed as follows (at pp. 612 and 613 of AIR):

"There is no doubt that these wage boards are not exercising purely judicial functions. They are not Courts in the strict sense of the term and the functions which they perform may be best be quasi judicial in character. The fact that they are administrative agencies set up for the purpose of fixation of wages do not necessarily invest their functions with an administrative character and in spite of their being administrative bodies they can nevertheless be exercising quasi judicial functions if certain conditions are fulfilled.

The position in law has been thus summarised in Halsbury's Laws of England, 3rd Ed., Vol II at pp. 55-56:--

"The orders of certiorari and prohibition will lie to bodies and persons other than Courts *stricto sensu*. Any body of persons having legal authority to determine question affecting the rights of subjects, and having the duty to act judicially, is subject to the controlling jurisdiction of the High Court of Justice, exercised by means of these orders, it is not necessary that it should be a Court; an

administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of, and are not in accordance with the practice of, a Court of law. It is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition. A body may be under a duty, however, to act judicially (and subject to control by means of these orders) although there is no form of his inter parties before it; it is enough that it should have to determine a question solely on the facts of the particular case, solely on the evidence before it, apart from questions of policy or any other extraneous consideration."

"Moreover an administrative body, whose decision is actuated in whole or in part by questions of policy, may be under a duty to act judicially in the course of arriving at that decision. Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, if at some stage of the proceedings leading up to the decision there was Something in the nature of a lis before it, then in the course of such consideration and at that stage the body would be under a duty to, act judicially. If, on the other hand, an administrative body in arriving at its decision has before it at no stage any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any time to act judicially."

In order therefore to determine whether an administrative body is exercising a quasi judicial function, it would be necessary to examine in the first instance, whether it has to decide on evidence between a proposal and an opposition and secondly, whether it is under a duty to act judicially in the matter of arriving at its decision.

"The duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute, with the assistance of the general principles already set out."

55. In view of the decisions referred to above and other decisions referred to by brother Pandey, J. this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can issue writ of certiorari if the proceeding was tainted with the defects as in the instant case.

56. However, I am unable to persuade myself to hold that it was permissible to the commission to issue notice u/s 8B of the Act to Shri Advani only to enable the commission to censure Shri Advani for his past political activities. The offending passage in the report has no nexus at all with the ultimate findings of the Commission. Shri Advani was not even remotely connected with the subject matter of the Enquiry, hence if notice was issued to him which, in my opinion, in the facts and circumstances the present case was an impossible proposition, the

same would have been struck down if questioned before this Court.

57. However, petitioner Shri Advani who is a political leader of national eminence has right to approach this Court for a direction that the State be restrained from taking any action against him on the basis of the report since he was not a party before the Commission.

In N. Manoharan Vs. State of Tamil Nadu and Another, , which has already been considered by my learned brother, the Commission in its report pointedly and directly and indicated a Civil Servant without notice to him u/s 8B of the Act. The Madras High Court quashed the proceedings based entirely on the findings of the Commission.

I have grave doubt that there is even a remote possibility of any action being taken against Shri Advani on the basis of obiter observations of the Commission.

With these words I express my entire Concurrence with the judgment and final verdict delivered by my learned brother Pandey, J.