

(2002) 03 DEL CK 0004
In the Delhi High Court
Case No : L.P.A. No. 693 of 2001

Ms. Sarla Kaushik and Others

APPELLANT

Vs

Jagjit Singh Rathor and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Advocates Act, 1961 — Section 15, 5
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(2)
Constitution of India, 1950 — Article 14
Delhi Municipal Corporation (Amendment) Act, 1993 — Section 4
Delhi Municipal Corporation Act, 1957 — Section 10, 10(3), 11, 17, 2(9)
General Clauses Act, 1897 — Section 14, 16, 21

Citation : (2002) 99 DLT 822 : (2002) 64 DRJ 545

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : K.C. Mittal, for the Appellant; Pradip Nandrajog, for R-1 and 2, V.K. Shali, for R-3 and Ram Singh, for R-4, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—Interpretation of Section 3(3)(b)(i) of Delhi Municipal Act, 1957 (hereinafter referred to as "the said Act") falls for consideration in this Letters Patent Appeal, which arises out of a judgment and order dated 20.11.2001 passed by learned Single Judge of this Court in C.W.P. No. 57 of 2001 whereby and whereunder a notification dated 15.12.2000 issued by the Administrator, Delhi in exercise of his power conferred upon him u/s 3(3)(b)(i) of the said Act was set aside.

2. Elections for Councillors in Municipal Corporation of Delhi (in short, "the Corporation") were held in February, 1997. The Administrator in exercise of his power conferred upon him u/s 3(3)(b)(i) of the said Act vide notification dated 29.09.1997, nominated ten persons to be represented in the Corporation including the petitioners. The said notification had neither been withdrawn nor

cancelled or amended.

3. By reason of the impugned notification dated 15.12.2000, the Administrator nominated ten more persons to be represented in the Corporation. Questioning the said notification, a writ petition was filed inter alia on the ground as nomination would be co-terminus with the duration of the Corporation, the impugned notification must be held to be bad in law.

4. The contention of the appellants herein as also the official respondents, on the other hand, per contra was that as the power of appointment embraces with the power to dismiss, by reason of the subsequent notification the first notification must be held to be impliedly repealed.

5. The learned Single Judge in his judgment impugned in this appeal held that the scheme of the said Act does not suggest that the Administrator has the power to replace the Members who had been nominated by issuing another notification superseding the earlier notification. Pursuant whereunto, he arrived at a finding that the tenure of the Members nominated u/s 3 of the said Act is co-terminus with the tenure of the Corporation.

6. The learned Single Judge laid emphasis on the fact that such nomination on the part of the Administrator is being not at his pleasure, the provisions of the General Clauses Act (in short, "GC Act") will have no application.

7. Before adverting to the questions involved, the relevant provisions of the said Act may be noticed:-

"2. Definitions -- In this Act, unless the context otherwise requires-

(6) "Commissioner" means the Commissioner of the Corporation;

(7) "Corporation" means the Municipal Corporation of Delhi established under this Act;

8. The Municipal Corporation of Delhi was originally constituted under the said Act. Certain new provisions were added by Amendment Act 67 of 1993 by reason whereof Sub-sections (3), (6), (7) and (8) were added to Section 3 and a new Section 4 was also substituted by the said amendment.

9. Section 3 of the said Act provides for establishment of the Corporation. The Corporation is to be a body corporate, known as Municipal Corporation of Delhi, which shall be composed of the following Councillors:-

"(3)(a) The Corporation shall be composed of the Councillors;

(b) The following persons shall be represented in the Corporation, namely:-

(i) ten persons, who are not less than 25 years of age and who have special knowledge or experience in municipal administration, to be nominated by the Administrator:

Provided that the persons nominated under this sub-clause shall not have the right to vote in the meetings of the Corporation;

(ii) members of the House of the People representing constituencies, which comprise wholly or partly the area of the Corporation and the members of the Council of States registered as electors within the area of the Corporation;

(iii) as nearly as possible one-fifth of the members of the Legislative Assembly of the National Capital Territory of Delhi representing constituencies, which comprise wholly or partly the area of the Corporation to be nominated by the Speaker of that Legislative Assembly by rotation every year:

Provided that while nominating such members of rotation, the Speaker shall ensure that as far as possible all the members are given an opportunity of being represented in the Corporation at least once during the duration of the Corporation."

10. The Councillors, who are nominated by the Administrator do not have any right or vote in the meetings of the Corporation. The Members of the Lok Sabha representing constituencies, which comprise wholly or partly municipal area and the Members of the Rajya Sabha registered as electors within the said area are also represented in the Corporation.

11. Besides the aforementioned persons, as nearly as one-fifth of the Members of the Legislative Assembly of the National Capital Territory of Delhi representing constituencies, which comprise wholly or partly the area of the Corporation, can be nominated by the Speaker of the Legislative Assembly by rotation every year.

12. The Chairpersons of the Committees constituted under Sections 39, 40 and 45 of the said Act are also representative in the Corporation provided that such persons are not Councillors.

13. The total under number of Councillors varies from 80 to 134. It is not in dispute that those, who are specially mentioned in Section 3 of the Act, who have special knowledge or experience of municipal administration are nominated by the Administrator.

14. Although in terms of Sub-section (i) of Section 4 of the Act, the duration of the Corporation would be 5 years unless sooner dissolved, but the same would not mean that the nominated persons would also continue to hold office for a period of 5 years.

15. The writ petitioners were nominated by notification dated 29.08.1997, which is in the following terms:-

"GOVERNMENT OF NATIONAL

CAPITAL TERRITORY OF DELHI

(DEPARTMENT OF URBAN DEVELOPMENT)

VIKAS BHAWAN : NEW DELHI

NOTIFICATION

Dated the 29th August, 1997

No. F.13(27)/97UD/Pt.-III/11023-

The Lieutenant Governor of the National Capital Territory of Delhi is pleased to nominate the following persons under the provisions of Sub-clause (i) of Clause (b) of Sub-section (3) of the Delhi Municipal Corporation Act, 1957, as amended by the Delhi Municipal Corporation (Amendment) Act, 1993, who shall be represented in the Municipal Corporation of Delhi, namely-

SI. No. Name of the Persons

1. Capt. Surjan Singh Yadava
2. Sh. Jagjit Singh Rathor
3. Syed Mohd. Yaseen Nadeem
4. Shri Dharmendra Gupta
5. Dr. R.K. Dhawan
6. Smt. Kailash Rekhi
7. Shri Devi Singh Mann
8. Shri Rajendra Rajora
9. Capt. Ram Singh
10. Shri Prabodh Mahajan

The above-nominated persons shall not have the right to vote in the meetings of the said Corporation.

By Order

And in the name of Lt. Governor of
the National Capital Territory of Delhi."

16. The impugned notification dated 15.12.2000 reads thus:-

"GOVERNMENT OF NATIONAL

CAPITAL TERRITORY OF DELHI

(DEPARTMENT OF URBAN DEVELOPMENT)

VIKAS BHAWAN : NEW DELHI

NOTIFICATION

Dated the 15th December, 2000

No. F. 13(27)/97/UD/Pt.-III/16541-50-

The Lieutenant Governor of the National Capital Territory of Delhi is pleased to nominate the following persons under the provisions of Sub-clause (i) of Clause (b) of Sub-section (3) of the Delhi Municipal Corporation Act, 1957, as amended by the Delhi Municipal Corporation (Amendment) Act, 1993, who shall be represented in the Municipal Corporation of Delhi, namely-

SI. No. Name of the Persons

1. Mr. Rakesh Bhan G-16, NDSE Part-II New Delhi-49
2. Mr. Arnold James 11, Nimri Colony New Delhi-52
3. Master Rati Ram 586/41, Jor Bagh Tri Nagar, Delhi-35
4. Dr. Sarla Kaushik 4A/CC, Shalimar Bagh Delhi.
5. Mr. Mahinder Singh 2A, Bharat Nagar Near New Friends Colony New Delhi-65.
6. Dr. Ashok Chauha D-4, East Vinod Nagar Delhi-91.
7. Mr. Mukesh Tewari 184, Pratap Khand Vishwavikram Nagar Shahdara, Delhi-95.
8. Abdul Sami Salmani A-II/181, 182, Sec-III Ambedkar Nagar New Delhi-110062.
9. Mrs. Raj Sachdeva A-5, Amar Colony Lajpat Nagar-IV, New Delhi-110024.
10. Mr. Fakir Chand Munde 9/4929, Gali No.5 Mohan Taj Nagar East Seelampur (old), Delhi-31

The above-nominated persons shall not have the right to vote in the meeting of the said Corporation.

By Order

And in the name of Lt. Governor

Of the National Capital Territory of Delhi."

17. Mr. K.C. Mittal, the learned counsel appearing on behalf of the appellants would submit that the Corporation is composed of only the elected representatives from different constituencies ,who would be about 80 in all.

18. According to the learned counsel having regard to the Amendment Act of 1993 whereby the 5 years" duration has been prescribed would not include within its term the nominated representatives.

19. The learned counsel would contend that the appointments may be made for

various considerations including political consideration. On such consideration, a nominee does not derive a right to continue to hold the post, despite the fact that the Administrator does not want him to continue, particularly when they have not been given a right to vote.

20. The learned counsel would contend that the power to nominate would include the power to nominate somebody else in terms of the provisions contained in Section 16 and 21 of the GC Act. Reliance in this connection has been placed on Ghanshyam Singh Vs. Union of India and Others, Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others, and Union of India and Ors. v. Diljeet Singh and Anr. JT 99 (1) SC 609.

21. The learned counsel appearing on behalf of the respondents, on the other hand, would contend that in a situation like this, the entire scheme of the Act has to be taken into consideration and the same would show that the nomination is for a period of 5 years. The learned counsel would contend that the duration of a nominated Member cannot be uncertain.

22. Mr. Nandrajog, the learned counsel appearing on behalf of the respondents nos.1 and 2, would submit that the provisions of Section 16 and 21 of the GC Act begin with the words "unless a different intention appears" and as, in the instant case, different intention can be deciphered from the scheme of the GC Act, the learned Single Judge must be held to have correctly held that the tenure of such nominated Councillors would also be 5 years and/or would be co-terminus with the duration of the Corporation.

23. The nominees of the Administrator in terms of Section 3(3)(b) of the Act are not holders of any office or post. They do not enjoy any pecuniary benefit; their term of nomination is not governed by statute; and there does not exist any provision in the said Act for their removal. Would this mean that such nominated Councillors once nominated, even on erroneous premise, cannot be removed? The answer to the said question must be rendered in the negative.

24. A reason for removal may arise in various contexts apart from the political consideration. In a case, it may be held that a person who has criminal record has been nominated or the person nominated does not fulfill the conditions therefore. The nominated Councillor after nomination may be convicted in an offence involving moral turpitude. The contention of the writ petitioner is accepted as has been found favor with the learned Single Judge, in no situation the nominated Councillors can be removed at all. In other words, if once nomination is made, the hands of the Administrator would be tied and the entire Corporation will have no other option, but to bear the Councillors, who may not otherwise be fit to continue in the office.

25. It is, Therefore, difficult for us to accept the proposition that the nomination of the Councillors in terms of Section 3(3)(b) of the said Act shall be co-terminus with the duration of the Corporation as provided u/s 4 thereof.

26. Section 16 of GC Act states that where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. Such a power is well known is an incident to or consequence of the power of appointment. Power to terminate flows naturally and as a necessary sequence from the power to create.

27. In Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhavi Amma and Ors. AIR 1950 F C 140, 1949 FCR 667 it was held that the authority to call an officer into being necessarily implies the necessity to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other causes shown.

28. The matter might have been different where not only a provision of removal exists in the Act, but also a procedure Therefore is laid down. Different intention, Therefore, must be gathered from the procedure for removal of such nominee Councillor(s) in terms of the provisions of the Act.

29. In Kailash Chand Mahajan's case (Supra), the Apex Court while interpreting the relevant provisions of the Electricity Act, which inter alia provided for the terms of office and conditions of reappointment of the Members of the Board, has observed:-

"54. A careful reading of the Section will clearly disclose the section merely talks of term of office and conditions for reappointment. Those conditions may be as prescribed. The word "prescribed" has come to be defined u/s 2(9) of the said Act. "Prescribed" means prescribed by rules made under this Act. Nowhere in this Section, our considered view, an additional power for appointment is conferred. At best it could be said that it merely lays down the eligibility for reappointment. As stated above, that eligibility must be as per conditions prescribed under the rules. As a matter of fact, when it says "shall hold the office for such period" it means the period as prescribed under the rules. Beyond this, we are unable to persuade ourselves to come to the conclusion that there is any separate power for reappointment. It is not even necessary to provide for such a separate power. The reason why we say so is Section 14 and 16 of Central General Clauses Act provide for such a power. Section 16 deals with the power of appointment carrying with it the power of dismissal, while Section 14 states any power conferred unless a different intention appears could be exercised from time to time as occasion requires. Where, Therefore, Section 5 provides for a power to appoint, certainly that power could be exercised from time to time as occasion requires. Thus one need not search for a separate provision in this regard."

30. In Om Narain Agarwal's case (Supra), the Apex Court held that where nomination appointments are made on political considerations, even the principles of natural justice are not required to be complied with stating:-

"11. There is also no question of any violation of principles of natural justice in

not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations."

31. In *Krishna Borate Vs. State of Maharashtra and Others*, The Apex Court followed *Om Narain Aggarwal's* case (Supra) holding:-

"Once doctrine of pleasure is applicable neither the principle of natural justice would step in nor any question of giving an opportunity before removal would arise. It is significant when stigma is cast then Sub-section (3) of Section 10 specially provides for giving an opportunity to such incumbent before passing an order of removal u/s 10, while there is no such corresponding sub-section u/s 6. Thus intent of legislature is very clear which reinforces the inference which we have drawn that doctrine of pleasure is implicit u/s 6."

32. As regards nomination of Members u/s 9 of the U.P. Municipalities Act, it was further observed in *Om Narain Agarwal's* case (supra):-

"We are not impressed with the reasoning given by the High Court that the fourth proviso to Section 9 of the Act in any manner deprived the fundamental right of equality as enshrined in Article 14 of the Constitution. It is well established that the right of equality enshrined under Article 14 of the Constitution applies to equals and not to unequal. The nominated members of the Board fall in a different class and cannot claim equality with the elected members. We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralize the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionary in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralize or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office."

33. In *Ghanshyam Singh's* case (Supra), the law has been laid down in the following terms:-

"36. Other reasons for coming to this conclusion are as follows:

(1) The initial nomination of the petitioner herein and for that matter nomination of any official or non-official on the Board of Directors was at the will of the Government. The Government has an inherent power to revoke the same as per Section 16 of the General Clauses Act. A Division Bench of this Court In *Bar Council of Delhi Vs. Bar Council of India*, has held that an elected office which is

held at pleasure, the holder can be removed at will without showing any cause unless there is a provision in the rules or bye-laws laying down that he can be removed only for a cause. Setting aside the decision of the Bar Council of India that a rule cannot be made u/s 5 of the Advocates Act for the removal of the Chairman of the Bar Council, it was, inter alia, held in paragraph 12 of the reported judgment that:

"The view of the Bar Council of India is on the other hand based on the very silence of the statute on this point. We are of the opinion that such silence indicates that the common law regarding the removal of the holder of an office remains unchanged. The statute does not, Therefore, have to say that the chairman of the State Bar Council would be removable by a resolution of no-confidence. The reason is that such power of removal is inherent in the Bar Council, which elects its Chairman. The power given to the State Bar Council to elect its Chairman is the codification of only a part of the common law. Such codification does not change the other part of common law, which implies in the State Bar Council the power to remove the Chairman so elected. Just as rules can be made u/s 15 to carry out the expressed power of the Bar Council to elect the Chairman, it would appear that rules may also be made to carry out the implied power to the State Bar Council to remove the Chairman. The two powers are inseparable in common law. They can be separated only by a statutory intervention. So long as this is not done, they would remain connected with each other even though only one of the powers, namely, the power of election has been made statutory while the other power, namely, the power of removal has been left to be implied. If such a power is not implied, the mere codification of the power to elect would result in a change in the common law. There is no warrant for implying such a change. On the contrary the construction of the statute in the light of the common law implies such a power in the State Bar Council."

We are bound by the principles of law enunciated in the said decision. In our view even in the absence of Sub-section (3) of Section 41, a nomination till further orders is liable to be revoked u/s 41(1) itself. The Government is vested with inherent powers to do so (See AIR 1950 PC 140 Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Madhavi Amma and Heckett Engineering Co. Vs. Their Workmen,

It has been held by the Supreme Court in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, that every share-holder (be it a corporation which is an instrumentality of the State has the same right as that of other shareholder to move a resolution to remove some Directors and appoint others in their places. It was held that the LIC of India cannot be restrained from doing so nor is it bound to disclose the reasons for moving the resolution. It was further held that Article 14 cannot be construed as a charter for judicial review of State actions "and to call upon the State to account for its actions in its manifold activities by stating reasons for such acts."

(2) The argument that the petitioner having been elected as Chairman by the Board of Directors of IFFCO, his term of office at any rate is conterminous with the term of the elected members of the Board and, Therefore, he is to continue till 30th March, 1991 as Chairman, is also to be negated. Mr. Thakur relies on Bye-law No. 44A in support of this submission. That bye-law reads as under:

"44A. The term of office of the Chairman and Vice-Chairman shall be conterminous with the term of the elected members of the Board. In case of any vacancy within this period, the Board shall fill up the vacancy through re-election for the unexpired term of the Board."

The contention is that even if the petitioner is no longer a Director, he has to continue as a Chairman. This contention is also unacceptable. It is axiomatic that a Chairman has to be a Director. The above bye-law cannot be read out of context. The underlying idea of the above quoted bye-law is that a Director who has been elected as a Chairman; shall remain a Chairman for the term of the elected members of the Board but if he ceases to be one by virtue of bye-law No. 38 or on his resignation as a Director or for any other reason, he cannot be held to be continuing as a Chairman. It is unnecessary to further analyse the contention as we are of the view that the petitioner's nomination as a Director cannot be deemed to be for a fixed period of three years, i.e., conterminous with the term of the elected members of the Board, nor can we be asked to restrain the Government from recalling his nomination."

34. Although the expression "at the pleasure" does not find place in Section 3(3) (b), having regard to the facts and circumstances of the case, we are of the opinion that the same may not make any difference keeping in view the fact that duration of the nominee Councillors is not otherwise provided for in the Act.

35. Reference to Section 45(3) and 50 of the Act, in our opinion, is not apposite, which is in the following terms:-

"45. Constitution of Standing Committee.-

(1)...

(2)...

(3) One-half of the members referred to in Clause (i) of Sub-section (1) and one-half of the members referred to in Clause (ii) of that sub-section shall retire on the expiration of one year from the date of the constitution of the Standing Committee after the commencement of the Delhi Municipal Corporation (Amendment) Act, 1993, and for that purpose they shall be selected by lot from amongst their respective categories before the said expiration in such manner as the Chairman of the Standing Committee may determine.

(4)...

(5)...

(6)...

50. Constitution of the Wards Committee.-(1) For each zone there shall be a Wards Committee which shall consist of,-

(a) all the Councillors elected from the wards comprised in that zone; and

(b) the person, if any, nominated by the Administrator under Sub-clause (i) of Clause (b) of Sub-section (3) of Section 3 of his name is registered as an elector within the territorial limits of the Zone concerned.

(2) The Wards Committee shall be deemed to have been constituted from the date on which the Corporation is constituted after each general election."

36. In terms of the aforementioned provisions, the nominees are also included in the vote committees. Once they ceased to be the nominees they would cease to be the Members of the vote committees also.

37. Yet again reference to Section 490(2) of the Act cannot have any relevance inasmuch as we are not concerned with a case of dissolution of the Corporation. The only question, which survives, is as to whether it was obligatory on the part of the Administrator to issue a separate notification terminating the nomination. The answer to that question must also be held to be in the negative.

38. Section 21 of GC Act reads thus:-

"21. Power to issue, to include power to add to, amend vary or rescind orders, notifications, rules or bye-laws.

Where, by any Central Act, or Regulation, a power to issue notification, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions (if any), to add to, amend, vary or rescind any notifications, orders rules or bye-laws so issued."

39. In terms of the aforementioned provisions Therefore the doctrine of implied repeal in a case of this nature should be applied.

40. In *Ratan Lal Adukia and Another Vs. Union of India*, the Apex Court held thus:-

"...The doctrine of implied repeal is based on the postulate that the legislature, which is presumed to know the existing state of law, did not intend to create any confusion by retaining conflicting provisions. Courts, in applying this doctrine, are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may be itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously. Section 80 is a special provision. It deals with certain class of suits

distinguishable on the basis of their particular subject matters."

41. The matter now stands concluded by reason of a recent decision of the Apex Court in *Union of India and Ors. v. Diljeet Singh and Anr.*, JT 99 (1) SC 609 it was held:-

"11. From a plain reading of the 1996 order, extracted above, it appears that it relates to delegation of powers under the COFEPOSA Act among other Acts. Under this order, the Finance Minister delegated powers to the Secretary (Revenue) to dispose of files relating to COFEPOSA/PITNDOS and files relating to some provisos of the Income Tax Act. It may be noted here that there is no reference to Section 3(2) or, for that matter, any of the provisions of the COFEPOSA Act in this office order. But in so far as the COFEPOSA Act is concerned, the delegation of powers relates to disposal of files concerning representation from the detainees under COFEPOSA/PITNDS addressed to the Government of India, i.e., representation u/s 11 and application for parole u/s 17 to the Secretary (Revenue). Omission of Section 3(2) in the notification/ orders is not material as the report submitted by the State Government is for purposes of exercise of powers u/s 11 of the COFEPOSA Act. It may be noticed that the subject matter of the 1991 notification and the 1996 order is in effect the same. But it must be borne in mind that the 1996 order is not a statutory order whereas the 1991 notification is a statutory notification issued under Rule 3 of the Transaction of Business Rules. It is true that where a subsequent order does not specifically supersede an earlier order but if both the orders relate to the same subject and are issued in exercise of the same power, statutory or otherwise, notwithstanding absence of specific words superseding earlier orders in the subsequent order, it can be inferred that the earlier notification has been impliedly superseded. But where the earlier order is a statutory notification and the subsequent order is not a statutory notification order but is merely an executive order such an inference cannot be drawn as a non-statutory order cannot replace a statutory notification even if it purports to do so specifically though a statutory notification can substitute a non-statutory notification / order. We are, Therefore, unable to hold that the 1996 order supersedes the 1991 notification. It thus follows that the Joint Secretary in the Ministry of Finance (Department of Revenue), Government of India was competent to exercise the powers of the Central Government under various provisions mentioned in the notification, including Section 3(2) of the COFEPOSA Act."

42. The decision of the Apex Court in *State of Madhya Pradesh Vs. Ajay Singh and others*, on which reliance was placed by Mr. Nandrajog, the learned counsel appearing on behalf of the respondent nos. 1 and 2, is not apposite, therein the Apex Court was considering the Commissioners of Enquiry Act, 1952, as amended by Act 79 of 1971 having regard to the scope and object of the Act, the applicability of the provisions of Section 21 was negatived stating:-

"21. In our opinion, the power of the Government to appoint a Commission of Inquiry and name the person or persons Constituting it is in Sub-section (1) of

Section 3 and is not an exercise divided between Sub-sections (1) and (2) of Section 3 as suggested by Shri Shanti Bhushan. Sub-section (2) merely confers the power in the Government to appoint a Commission consisting of one or more members and provides that if there be more than one member of the Commission, then one of them may be appointed Chairman of the Commission. It is not as if Sub-section (1) deals with the appointment of a Commission of Inquiry without clothing it with its personnel and the power to appoint the member/members thereof is to be found only in Sub-section (2). That apart, there is nothing in any of these provisions to suggest that the Government has the power to reconstitute the Commission after its appointment by replacing the existing sole member with another person. Sub-section (3) deals expressly with the Government's power to fill any vacancy, which may have arisen since the constitution of the Commission. The question of replacement of a member appointed initially is obviously beyond its scope."

43. As regards power of the State to fill up the vacancy as provided for u/s 8-A(2) was held by the Apex Court to mean any other reason, such as decrease in the number of Members, when the initial number is more than one, and the vacancy remains unfilled and the same. It does not mean substitution of the existing Member with another person, since no such power exists. The Apex Court further observed:-

"24. It is common ground before us that Section 21 of the General Clauses Act can be invoked only if, and to the extent, if any, the context and the scheme of the Commissions of Inquiry Act so permits. The general power in Section 21 of the General Clauses Act is "to add to, amend, vary or rescind any notifications" etc. In the context of reconstitution of the Commission, the power to fill any vacancy in the office of a member of the Commission is expressly provided in Sub-section (3) of Section 3 of the Commissions of Inquiry Act. Similarly, the power to discontinue the existence of the Commission when it becomes unnecessary can be exercised by issue of a notification in accordance with Section 7 of the Act, which results in rescinding the notification issued u/s 3 Constituting the Commission. Thus, the power to rescind any notification conferred generally in Section 21 of the General Clauses Act is clearly inapplicable in the scheme of the Commissions of Inquiry Act, which expressly provides for the exercise of this power in relation to a Commission constituted u/s 3 of the Act. The only material remaining general powers in Section 21 of the General Clauses Act are the power to "amend" or "vary" and notification. The extent of which the constitution of the Commission can be amended or varied by filling any vacancy in the office of a member as provided in the Commissions of Inquiry Act is also obviously excluded from the purview of Section 21 of the General Clauses Act which cannot be invoked for this purpose."

44. For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained, which is set aside accordingly. This Appeal is allowed. However, in the facts and circumstances of the case, there shall be no

order as to costs.