(1968) 03 CAL CK 0007

In the Calcutta High Court

Case No : Civil Revision No. 581 (W) of 1965

New Central Jute Mills Co. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 05-03-1968

Acts Referred:

Companies Act, 1956 — Section 209(4), 235, 237, 239, 240
Criminal Procedure Code, 1898 (CrPC) — Section 103, 165

Citation : (1968) 2 ILR (Cal) 119

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

Bench : Single Bench

Advocate : R.C. Deb, Subrata Roy Chowdury and Mahabir Prosad Chowdhury, for the Appellant;S. Chowdhury, B.N. Sen, B.C. Basak, N.C. Talukdar and A.L. Chatterjee, for the Respondent

Judgement

B.N. Banerjee, J.—The circumstances under which there was an order, made on April 11, 1963, for investigation into the affairs of the Petitioner company, u/s 237 of the Companies Act 1956, a further order u/s 209(4) of the Act, made on September 6, 1963, for inspection of the books and accounts of the said company and the circumstances under which the completion of the investigation was delayed and, therefore, extended from time to time and reason why the personnel of the inspectorate was changed have all been dealt with in my judgment in New Central Jute Mills Co. Ltd. Vs. Deputy Secretary, Ministry of Finance and Others, , and I need not recount the details. By the above judgment, I upheld the action taken against the Petitioner company but criticised the manner in which the investigation was being carried on in the following language:

I am constrained to observe that from April 11, 1963 to June 12, 1964, during which period S.P. Chopra acted as the sole inspector and thereafter from June 13, 1964 to June 30, 1964, during which S.P. Chopra acted along with a co-inspector, time and opportunity were wasted and no progress1 was made in the investigation. There is a note by S.P. Chopra, annexed to the affidavit-in-opposition, explaining his difficulties and the reasons for the slow progress. That document is dismal reading. He admits that at the beginning of the investigation, the Petitioner company showed signs of co-operation. He further admits that the Petitioner company prepared statements as required by him and submitted minute books when called for by him. Thereafter he himself created situations after situations by insisting upon signature of the management on statements supplied to him at his own request by sitting over the minute books of the company, by refusing to return the original minute books, even after the Petitioner company offered to supply certified copies of the books for his use by deputing members of his staff to do ''part of the work'' on his behalf and the like. Antagonism thus generated degenerated into wordy battles, deliberate non-co-operation and complaints against each other, in course of which S.P. Chopra felt insulted and personally insecure, for reasons best known to him. It appears to me that the energy of both sides was dissipated in petty-fogging disputes and ultimately S.P. Chopra recommended ''drastic action''. Some drastic steps, by way of seizure of documents etc. have already taken place, but I need not advert to that at this stage, because that is the subject-matter of another Rule which is now pending. I do not know how the new co-inspectors, Puri Bafna combination, will work, and I can only hope that they will not commit the same mistakes to which S.P. Chopra fell a victim The powers with which inspectors are invested under the Companies Act, are very wide and if legal remedies were resorted to in proper time, much time and energy might have been saved. I have adverted to this aspect of the matter at some length, because although the Respondents might have acted within their jurisdiction the carriage of the investigation has not been so far worthily done.

2. In this Rule, I am concerned with the validity of the action taken in seizing the books and documents of the Petitioner company in circumstances hereinafter related.

3. Section 240A of the Companies Act, dealing with seizure of documents by inspector, is couched in the following language:

240A. (1) Where in the course of investigation u/s 235 or Section 237 or Section 239 or Section 247, the inspector has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or any managing agent or secretaries and treasurers or managing director or manager of such company or other body corporate, or any associate of such managing agent or secretaries and treasurers may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application to the Magistrate of the First Class or, as the case may be, the Presidency Magistrate, having jurisdiction for an order for the seizure of such books and papers.

(2) After considering the application and hearing the inspector, if necessary, the Magistrate may by order authorise the inspector--

(a) to enter, with such assistance, as may be required, the place or places where such books and papers are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books and papers he considers necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing agent, or the secretaries and treasurers or the associate of such managing agent or secretaries and treasurers or the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return.

(4) Save as otherwise provided in this section, every search made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898, relating to searches made under that Code.

4. It appears that on July 19, 1964, the co-inspectors appointed to carry on the investigation made three ex parte applications u/s 240A of the Companies Act, one before the Chief Presidency Magistrate, Calcutta, the other before the District Magistrate, Howrah, and another before the District Magistrate, 24-Parganas, inter alia, stating:

Upon information in the possession of your Petitioners and otherwise your Petitioners have reasonable grounds to believe that books and papers of or relating to the company under investigation or its Managing Agent or any associate of such Managing Agent may be destroyed, mutilated, altered or falsified or secreted unless they are immediately seized by your Petitioners under orders by your Honour.

They prayed on the above grounds for authorisation, with the aid of police, to enter the places where such books were kept, to search the said places and to seize such books and papers as considered necessary.

5. The application were made before three different Magistrates, because the places to be searched were located within the local jurisdiction of the said different Magistrates.

6. The learned Magistrates allowed the applications--the orders by the Chief Presidency Magistrate, Calcutta, and the Sub-divisional Magistrate, Howrah, being dated July 19, 1964, and the order by the District Magistrate 24-Parganas, being dated July 20, 1964. All the orders were stereotyped in nature, reading either--"Heard learned Inspector. Considered the materials placed before me" or "Heard the learned Inspector. Considered the application", followed by the ordering portion allowing search and seizure.

7. It is stated in paras. 35, 36 and 37 of the petition:

35. ...all of a sudden on July 20, 1964, the Respondents Sarvasri I.M. Puri and

S.C. Bafna entered your Petitioner''s registered office at Calcutta and its jute mills and other places and wrongfully and illegally commenced and made indiscriminate searches with the assistance of a large number of officers from the office of the Registrar of Companies, West Bengal, Customs Department, Police Department and income tax Department and thereafter wrongfully and illegally seized various books and papers and documents of your Petitioner in spite of protest lodged on your Petitioner''s behalf. Besides, the said inspectors also wrongfully removed various of your Petitioners records upto and including those relating to the year ending March, 1964, and thereafter wrongfully sealed some almirahs and rooms containing the records.

36. Sri I.M. Puri, the Respondent No. 3 herein, entered the office premises of your Petitioner at 11 Clive Row, Calcutta, on July 20, 1964, at about 10 a.m. accompanied by Sri S.P. Khanna, Assistant Registrar of Companies, West Bengal and other officers of the said Registrar of Companies, West Bengal, and also about 85 officers from the Customs, income tax and other Government departments along with Police officers and started conducting search and no witnesses were called when they entered the premises for the search. Nor any independent witnesses were present during the entire period of the search. After the so-called seizure lists were prepared witnesses were called in only for the purpose of obtaining their signature and such witnesses put their respective signature on such seizure lists without verifying the contents thereof. The search continued till 8 p.m. in the night.... The search at 11 Clive Row continued from 11 a.m. to 8 p.m. on July 21 and July 22, the search continued till late in the evening. Sri S.C. Bafna, the Respondent No. 4, casually visited the office of your Petitioner at 11 Clive Row on July 21 and 22, 1964. In fact the said Sri S.C. Bafna did not take any part in the search or seizure at 11 Clive Row, Calcutta.

8 It is further stated in para. 36 of the petition that on July 20, 1964:

...Sri S.C. Bafna, the Respondent No. 4 herein, along with several other officers of the Government department started search and seizure at the company''s premises at Ghusuri. There too no witnesses were called during the course of the search and seizure and at the end of the day witnesses were called in to sign the seizure lists without verifying the contents thereof. The said search was continued by Sri S.C. Bafna even on July 21, 1964, the said Sri I.M. Puri, accompanied by Sri S.P. Khanna and several other persons, including the officers of the Customs and income tax departments, resumed search and seizure without calling any witnesses as on the previous day.

9. It is also stated in paras. 37 and 38 of the petition:

37. ...that on 20th July, 1964, at about 10 a.m. one Sri Bhawani Shankar representing himself to be the Assistant Registrar of Companies, West Bengal, entered into your Petitioners'' premises at Budge Budge along with several Customs officers and Police officers and started searching and removing indiscriminately various books, papers and documents of and/or relating to your

Petitioner. Later on, on the same day, S.D. Agarwal, the Respondent No. 8 herein, pretending to be an inspector, appointed u/s 237 of the Companies Act to investigate the affairs of Sahu Jain Ltd., illegally joined the said Mr. Bhawani Shankar in the said wrongful and illegal search, of papers and documents as aforesaid. On request being made on behalf of your Petitioner the said Sri S.D. Agarwal produced a purported search warrant and/or authority issued by the Respondent No. 7 in the matter of investigation of the affairs of Sahu Jain Ltd., and the said Respondent No. 9 claimed to have authority under the said purported order to search and seize papers and documents of or relating to your Petitioner. On July 20, 1964, the said officers and the Respondents mentioned hereinabove illegally removed various papers and documents of your Petitioner inside a room and thereafter sealed the said room. Again on July 21, 1961, both the said Bhawani Shankar and Sri S.D. Agarwal illegally resumed the search and seizure at your Petitioners'' premises at Budge Budge; Sri S.D. Agarwal, the Respondent No. 9 herein, wrongfully and illegally and without having any authority whatsoever seized 51 files containing various documents and papers of or relating to your Petitioner from the rooms of the Works Manager and Assistant Works Manager of your Petitioner''s Mills.

38. Your Petitioner states that on July 27, 1964, Sri S.C. Bafna and Sri S.D. Agarwal, the Respondents Nos. 4 and 8 respectively, went to your Petitioner''s mill premises at Budge Budge and removed the seal from the room which were previously sealed as aforesaid and started seizing documents and papers of your Petitioner.

10. Lastly it is stated in para. 39 of the petition:

39. On July 22, 1964, during the course of the said wrongful and illegal search and seizure as aforesaid the said Sri I.M. Puri accompanied by Sri S.P. Khanna and Sri D.S. Dhang, Deputy Secretary, Ministry of Finance, Government of India, wrongfully and illegally took various photographs of daily waste paper collections and daily sweepings at premises No. 11 Clive Row. The said photographs were taken without any reason and with some ulterior purposes or for the purpose of creating prejudice in the matter. The said waste papers and sweeping of which photographs were taken as aforesaid were seized and sealed.

The seized books and papers are now lying in custody of the Registrar of Companies (Respondent No. 9), under an order dated July 24, 1964, made by this Court in Matter No. 272 of 1964.

11. The Petitioner submitted that (a) the inspectors did not and could not have reasonable or any ground to believe or any material or information that the books and papers were likely to be destroyed, mutilated, altered, falsified or secreted. They falsely and maliciously represented in their respective applications for orders for search and seizure that they had reasonable ground for such belief in order to wrongfully procure the said orders without stating the materials upon which such alleged belief was formed and without disclosing material facts, (b)

the said ex parte applications were made in desperate hurry on a Sunday and the said orders were obtained mala fide and with an ulterior motive to forestall any legal proceedings on the part of the Petitioner and to circumvent the provisions of Section 240(3) of the Companies Act and thereby to wrongfully deprive the Petitioner of the protection which the said section gave to your Petitioner, (c) there was no evidence or real or any material before the Magistrates on the basis of which the impugned orders could lawfully or reasonably be passed, (d) the Magistrates and each of them illegally and without jurisdiction and/or in excess of jurisdiction passed the said orders without any material and/or without disclosing the reasons for passing the said orders, (e) the Magistrates illegally passed their respective orders as a matter of course and without requiring the inspectors concerned to prove the allegations that they had any or reasonable ground of belief as alleged in the said applications. They failed to apply their mind to the cases before them, (h) the search and seizure by Sri S.D. Agarwal and/or Sri Bhawani Shankar were illegal, wrongful and without authority and as such null and void, (i) the search and seizure as hereinbefore indicated, were illegal and were carried out in an illegal manner. The search and seizure were not carried out in any event in terms of the purported orders of the Magistrates, (k) it is apparent from the face of the orders that the said orders were otherwise illegal and null and void and not in terms of Section 240A of the Companies Act. The Petitioner prayed, in these circumstances, for writ of certiorari quashing the order of the Magistrates and for a mandate upon the Registrar of Companies (Respondent No. 9) for returning the seized books, papers, documents and articles.

12. There are five affidavits-in-opposition filed in the Rule, namely, by (i) S.D. Dhang, a Deputy Secretary, Ministry of Finance, Government of India, on behalf of the Union of India (Respondent No. 1), (ii) I.M. Puri, co-inspector (Respondent No. 3), (iii) S.C. Bafna, co-inspector (Respondent No. 4), (iv) A.K. Mazumdar, District Magistrate, 24-Parganas (Respondent No. 7), (v) S.D. Agarwal, inspector (Respondent No. 8).

13. S.D. Dhang in his affidavit says,

(a) ...the Petitioner, its officers, servants and agents hindered and delayed the proper investigation of the company''s affairs and making out of a proper and adequate report by withholding and preventing to disclose relevant and material documents and information as appears from a letter written by Sri S.P. Chopra, one of the appointed inspectors and dated June 30, 1964,... I also say that on or about June 30, 1964, information was received from diverse sources by the Department of Revenue and Company Law (hereinafter referred to as the ''Department'') that the Petitioner was taking steps to destroy, mutilate and secrete relevant books and documents of or relating to the affairs of the company.

(b) I say that, in the course of investigation, Sri Puri, one of the inspectors received informations from other sources that the books and papers of or relating to the Petitioner company were being destroyed, mutilated and secreted by them with a view to prevent proper investigation being carried out by the inspectors. The inspectors had also seen the said letters dated June 30, 1964, of Sri S.P. Chopra and knew the experience of Sri S.P. Chopra of the various obstructive and dilatory tactics adopted by the Petitioner company and its officers and/or employees regarding the investigation into the affairs of the said company and the production of its books and papers. The inspectors were also aware of the contents of Vivian Bose Inquiry Commission''s report which recorded destruction of books of diverse companies in which the persons in charge of the management of the Petitioner company were also concerned. Sri Puri had his own experience regarding the attitude of the Petitioner and its officers. Having regard to all these facts, the inspectors reasonably believed that the books and papers of the Petitioner company which are still existing may be destroyed, mutilated, altered, falsified or secreted. Accordingly, the inspectors made applications u/s 240A of the Companies Act, 1956, to the appropriate Magistrates having jurisdiction in the matter for order for seizure of such books and papers.

* * * *

(c) I say that, in the course of the said searches, Sri Puri came across a huge heap of torn books and papers in the premises of the registered office of the Petitioner company at No. 11 Clive Row, Calcutta.

He relies upon information received from I.M. Puri and S.C. Bafna in support of the statements in (a) and (b) above. The information contained in para. 4(c) of the affidavit, which I have set out in (c) above, is true to his knowledge but is inconsequential in nature because it is not disclosed what those books and papers were. I do not, therefore, make much of this affidavit by itself.

14. I.M. Puri in his affidavit gives the following explanation as to why steps u/s 240A of the Companies Act were taken:

...I say that it was apparent both to myself and to Sri S.P. Bafna as inspectors that the Petitioner or its officers were in no mood to comply with any requests which may be made by us regarding production and inspection of its books and documents...the Petitioner and its officers, servants or agents hindered and delayed the proper investigation of the company''s affairs and making out a proper and adequate report by withholding the disclosure of relevant and material documents and informations. The same would also be borne out by the said letter of the inspector Sri Chopra dated June 30, 1964.

* * * *

I had also my own experience regarding such hindrance and delay. I further say that informations were received from diverse sources by the Department of Revenue and Company Law that the Petitioner was taking steps to destroy, mutilate and secrete relevant books and documents of or relating to the affairs of the company and these informations were passed on to myself and Sri Bafna by the Department. I further say that in the course of the investigation I also received information from other sources that the books and papers of or relating to the Petitioner company were being destroyed or mutilated or secreted with a view to prevent proper investigation being carried out by the inspectors. Sri Bafna and myself had also seen the said letter of Sri Chopra dated June 30, 1964, and knew the experience of Sri Chopra of the various obstructive and dilatory tactics adopted by the company and/or its officers and employers regarding the investigation into the affairs of the said company and the production of its books and papers. Sri Bafna and myself were also aware of the contents of the Vivian Bose Inquiry Commission Report which recorded destruction of books of diverse companies in which the person in charge of the management of the Petitioner company were also concerned. I for myself had also my personal experience regarding the attitude of the Petitioner and its officers as stated hereinabove Having regard to all these facts I and Sri Bafna reasonably believed that the books and papers of the Petitioner company which were then existing may be destroyed, mutilated altered or falsified or secreted.

As to the grievance made by the Petitioner in para 35 of the petition, hereinbefore set out, he said:

...It was apprehended by myself and Sri Bafna that unless the said searches and seizures were carried out at a number of places simultaneously, the Petitioner and its officers and/or employees may try to secrete, destroy or mutilate the papers, books and documents which or otherwise so deal with the same so as to make such searches and seizures and consequently the investigation itself, infructuous. Under these circumstances, we the inspectors took assistance of some other officers of the Central Government apart from the members of the Calcutta Police Force. We also took assistance of the other inspectors appointed in respect of Ashoka Marketing Ltd. and Sahu Jain Ltd.... I admit that certain books, papers and documents of the Petitioner were seized, but I deny that such seizures were wrongful or illegal as alleged or at all I admit that certain books and papers which were seized pursuant to the orders made u/s 240A and pursuant to the orders of this Hon''ble High Court dated July 23, 1964, were removed from the Petitioner''s office, but I deny that such removal was wrongful. I admit that from time to time certain books and papers were kept in some almirahs and/or rooms in the premises of the Petitioner, but I say that it was so done under the following circumstances. At the end of each day''s searches when it was found that the search and seizure was not complete and could not be completed on that particular day, inspectors concerned placed and kept the said books and papers in some almirahs and/or rooms and sealed the same in order that the same could be examined by the inspectors concerned on the next day for the purpose of considering and ascertaining whether they should be seized or not and/or for the purpose of preparation of the seizure lists.

He further said that, on account of physical observation to the conduct of the search, he had to take assistance from the Police and from officers employed in the Department of Revenue and Company Law of the Government of India. He also said that there were witnesses present during the searches and seizures. He admitted that his co-inspector Bafna was not present at premises No. 11 Clive Row throughout the searches because he was engaged in carrying out a simultaneous search at the Petitioner''s premises at Ghusuri, but he kept himself in touch with what was going on at 11 Clive Row.

15. With regard to the grievances made by the Petitioner in para. 36 of the petition, already set out, he said that:

...on July 20 and 21, 1964, searches and seizures were carried on at the direction of Sri Bafna and myself at the Petitioner''s premises at Budge Budge by Sri Bhawani Shankar, S.D. Agarwal and other assistants. As already explained inasmuch as we felt the necessity of carrying out the searches at these places simultaneously and inasmuch as I was present at the Petitioner''s office premises and Sri Bafna at Ghusuri at that time, therefore, we asked the said persons to carry out the searches and seizures at Budge Budge in accordance with our instructions. I further say that in respect of such search and seizure at Budge Budge Sri S.D. Agarwal acted as our Assistant and also in his own right as an inspector appointed for the investigation in respect of Sahu Jain Limited, the Managing Agents of the Petitioner company and in respect of which also orders were made u/s 240A of the Companies Act, 1956. This was well-known to the Petitioner company and its officers and employees who were present during such searches. I further say that Sri Bhawani Shankar, who was then the Assistant Registrar of Companies, West Bengal, acted as an assistant to the inspectors appointed to investigate into the affairs of the Petitioner company and the Sahu Jain Ltd. both, in connection with such searches and seizures at Budge Budge. I admit that in connection with such searches and seizures, assistance was taken from the Customs and Police Officers.

As to the grievances made in para. 29 of the petition, hereinbefore set out, he said that:

...on July 22, 1964, and in the course of the searches, I came across a huge heap of torn books and papers in the premises of the registered office of the Petitioner at No. 11 Clive Row as mentioned hereinabove and I caused photographs to be taken of the same inasmuch as it was apprehended that the same contained proof of destruction of records.

16. S.D. Bafna in his affidavit supports what is said by I.M. Puri in his affidavit.

17. S.D. Agarwal in his affidavit says:

...I admit that on July 21, 1964, searches and seizures were carried out by me along with Sri Bhawani Shankar and other assistants at the place mentioned therein. I say that I did not attend or take part in any search or seizure which took place on July 20, 1964. The inspectors appointed to the Petitioner company felt the necessity of carrying out search and seizure at all places to wit at about eight places simultaneously and inasmuch as the inspectors themselves were engaged in connection with searches and seizures at other places, the said inspectors asked me and Sri Bhawani Shankar to carry out the search and seizure at Budge Budge as their assistants. I further say that in respect of the said searches and seizures at Budge Budge, I not only acted as assistant to the said inspectors but also in my own right as inspector appointed in respect of Messrs. Sahu Jain Limited in respect of which also orders were made u/s 240A of the Companies Act, 1956. This was well-known to the Petitioner, its officers and employees who were present during such searches. I further say that Sri Bhawani Shankar who was the then Assistant Registrar of Companies, West Bengal, acted as an assistant to the inspectors appointed to investigate into the affairs of the Petitioner company and Messrs. Sahu Jain Limited both in connection with such searches and seizures at Budge Budge.

18. Mr. R.C. Deb, learned Counsel for the Petitioner, relied upon Sub-sections (1) and (3) of Section 240 of the Companies Act which are couched in the following language:

240. (1) It shall be the duty of all officers and other employees and agents of the company and where the company is or was managed by a managing agent or secretaries and treasurers, of all officers and other employees and agents of the managing agent or secretaries and treasurers, and where the affairs of any other body corporate, or of a managing agent or secretaries and treasurers, or of an associate of a managing agent or secretaries and treasurers., are investigated by virtue of Section 239, of all officers and other employees and agents of such body corporate, managing agent, secretaries and treasurers, or associate, and where such managing agent, secretaries and treasurers or associate is or was a firm, of all partners in the firm--

(a) to produce to an inspector all books and papers of or relating to the company or, as the case may be, of or relating to the other body corporate, managing agent, secretaries and treasurers or associate, which are in their custody or power; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(3) If any such person fails without reasonable cause or refuses--

(a) to produce to an inspector any book or paper which it is his duty under Sub-section (1) to produce, or

(b) to appear before the inspector personally when required to do so under Sub-section (2) or to answer any question which is put to him by the inspector in pursuance of that Sub-section; the inspector may certify the failure or refusal under his hand to the Court and make an application to the Court to hold an enquiry into the case; and the Court may, thereupon, after taking such evidence, if any, as may be produced against or on behalf of the alleged offender and hearing his explanation, if any, make an order for the production by him before the inspector of all such books or papers within a date to be specified in the order or requiring such person to answer any question which may be put to him by the inspector.

and submitted that, assuming for the sake of argument that there was failure or refusal to produce documents on the part of the Petitioner company or their officers, steps might have been taken u/s 240(3), but there was no ground made out for steps being taken u/s 240A(2), which I have already set out The grounds which weighed with the inspectors in applying u/s 240A were:

(a) that it was apparent to them that the Petitioner company and their officers were in no mood to comply with requests for production and inspection of books and documents.

(b) that the Petitioner company and their officers hindered and delayed investigation by withholding relevant documents. This was also the effect of inspector Chopra''s report dated June 30, 1964.

(c) that informations were received from diverse sources by the Department of Revenue and Company Law that the Petitioner was taking steps to destroy, mutilate and secrete relevant books and documents and that such informations were passed on to them.

(d) that they had information from other sources to the same effect.

(e) that they found inspiration from Vivian Bose Inquiry Commission Report, which contained a record of destruction of documents by several companies, in which the persons in charge of management of the Petitioner company were also concerned.

(f) that their personal experience about the attitude of the Petitioner company supported the move.

19. Grounds (a) and (b) set out above, even if made out, merely support action u/s 240(3) of the Companies Act. The report by Chopra, dated June 30, "1964, copy of which is annexed to the affidavit of I.M. Puri does not speak of the possibility of destruction, mutilation or falsification of the records but emphasises upon the non-co-operative or obstructive attitude of the Petitioner company, although it suggests action u/s 240A without more. The informations alleged in grounds (c) and (d) are mostly uninformative and from undisclosed sources. I could not discover, in spite of repeated efforts, the exact type of information received and the sources where-from the same was obtained. The Vivian Bose Inquiry Commission Report contains nothing against the Petitioner company. The personal experience of the co-inspectors does not go beyond non-co-operative and obstructive attitude of the Petitioner company, for which again the Petitioner company was not alone to be blamed, as already observed in the opening paragraph of this judgment. Thus judged by objective standards the grounds for

action u/s 240A was not factually made out.

20. The question, however, remains whether the subjective opinion of the inspector or inspectors may justify an action u/s 240A. The language used in the section is "the inspector has reasonable ground to believe".

21. Now, when a statute leaves an action dependant upon the opinion of the administration by some such expression as ''is satisfied'' or ''is of the opinion'' or ''if it has reason to believe'' or ''if it considers necessary'', the opinion of the administrative authority is conclusive, (a) if the procedure prescribed by the Act, if any, for the formation of the opinion was duly followed, (b) if the authority acted bona fide, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed. The authorities from which the above proposition may be collected are Ridge v. Baldwin (per Lord Reid) (1963) 2 A.E.R. 66, Ross Clunis v. Papadopopullos (per Lord Morton of Henryton) (1958) 2 A.E.R. 23, Roberts v. Hopewood (1925) A.C. 578, King Emperor v. Sibnath Banerjee L.R. 72 IndAp 241 and several decisions of this Court and of the Bombay High Court, which I have collected in my judgment in New Central Jute Mills Co. Ltd. v. Deputy Secretary Supra and need not repeat. In the instant case, Section 240A does not prescribe any procedure for the formation of the opinion. The formation of the opinion, however, is to be based on reasonable grounds, that is to say, upon grounds which no reasonable body should ignore. What I mean to say is what was said by Lord Greene, M.R., in Associated Press Picture House Ltd. v. Wednesbury Corporation (1947) 2 A.E.R. 680 (683):

Counsel at the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant it must be proved to be unreasonable in the sense, not that it is what the Court considers unreasonable, but that it is what the Court considers is a decision that no reasonable body could have come to, which is a different thing altogether.

Applying the above test I find that there was no basis on which the inspectors could form the idea that there were perils of the documents being destroyed, mutilated or secreted. As I have observed in my judgment in New Central Jute Mills Co. Ltd. Supra, there was oppositionism to the investigation, generated by the manner in which it was being carried on, but there was nothing to show that the Petitioner would go to the extreme length of destroying documents to frustrate the investigation. Thus, although the inspectors may have proceeded bona fide and themselves formed the opinion that search and seizure of documents would facilitate investigation, as also suggested by Chopra in his report dated June 30, 1964, they erred as to the matter in respect of which the opinion had to be formed, namely, possibility of destruction of documents. Refusal to produce documents on the part of the investigated company may be remedied by action u/s 240(3), but mere refusal to produce documents does not merit an action u/s 240A of the Companies Act.

22. It was contended on behalf of the Respondents Nos. 1, 3, 4, 8 and 9 that an order u/s 240A was an administrative or an executive order and objective consideration for such an order was not necessary. In support of the contention that the nature of the order was executive and not judicial, reliance was placed on the following observation by the Supreme Court in Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others, :

...But it is now well-settled that functions which do not fall strictly within the field, legislative or judicial, fall in the residuary class and must be regarded as executive.

In Halsbury''s Laws of England, 3rd ed., vol. 7, Article 409, p. 192, it is observed:

Executive functions are incapable of comprehensive definition, for they are merely the residue of the functions of government after legislative and judicial functions have been taken away. They include, in addition to the execution of the laws, the maintenance of public order, the management of Crown property and nationalised industries and services, the direction of foreign policy, the conduct of military operations, and the provision or supervision of such services as education, public health, transport and state assistance and insurance.

* * * *

...In the performance of the executive functions, public authorities issue orders which are not far removed from legislation and make decisions affecting the personal and proprietary rights of individuals which are quasi-judicial in character. In addition to those quasi-judicial and quasi-legislative functions, the executive has also been empowered by statute to exercise functions which are legislative and judicial in character and, in certain instances, powers are exercised which appear to partake at the same moment of legislative, executive and judicial characteristics. In the complexity of problems which modern government have to face and the plethora of parliamentary business to which it inevitably leads, it becomes necessary that the executive should often exercise powers of subordinate legislation: Halsbury''s Law of England, vol. 7, Article 409. It is indeed possible to characterise with precision that an agency of the State is executive, legislative or judicial, but it cannot be predicated that a particular function exercised by any individual agency is necessarily of the character which the agency bears.

23. Reliance was also placed on another judgment of the Supreme Court in Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others, :

It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative and a judicial order. That the power is entrusted to or wielded by a person who functions as a Court is not decisive of the question whether the act or decision is administrative or judicial. But we conceive that an administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the Court. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a Court and if the discretion has to be exercised on objective, as distinguished from a purely subjective consideration, it would be a judicial decision. It has sometimes been said that the essence of a judicial proceeding or of a judicial order is that there should be two parties and a lis between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition. (Sic) No doubt, it would not be possible to describe an order passed deciding a lis before the authority, that it is not a judicial order but it does not follow that the absence of a lis necessarily negatives the order being judicial.

Relying on the above observations, it was submitted, on behalf of the Respondents, that an investigation into the affairs of a company was an administrative act and an order made for search and seizure of documents in aid of such an administrative act was an administrative order, the necessity for which rested on administrative satisfaction. I am not satisfied with this argument. Whenever there is an investigation started u/s 237 of the Companies Act, it is not permissible to seize the books and documents of the investigated company. If the investigated company co-operates, then the inspection of books and documents should be made by the inspector by appointment or arrangement. If the investigated company refuses to produce documents, then it is for the inspector to bring the matter to the notice of the Court u/s 240(3) of the Companies Act, and it is for the Court to make appropriate orders for production and inspection and to punish the delinquent in case of disobedience of the order. It is only when the inspector has reasonable grounds to believe that books and documents may be destroyed, mutilated, altered or secreted that he may apply before the Magistrate for an order of seizure of books.

24. The fact that a Magisterial order is necessary indicates that the Magistrate is to be judicially satisfied about the grounds alleged before making an order for search and seizure. If the belief of the inspector only mattered, it would not have been necessary for him to go to a Magistrate. The Magistrate is not required to act like an automation and allow every application made before him u/s 240A. He may make an enquiry into the allegation if he feels so inclined. He may allow an application, without an enquiry, if on the materials contained in the application he feels satisfied. But in either event he must apply his judicial mind to the application. The view I take finds support from decision of this Court in S.K. Srivastava Vs. Gajanand Patriwalla, and a judgment of the Bombay High Court in A.J. Butler Vs. Mohanlal and Co. and Others, .

25. Further, Section 240A(2) requires the Magistrate (a judicial officer and not a persona designates) to ''consider'' the application made by the inspector. This entails that the Magistrate must apply his judicial mind and decide what order to make on the application. Vide Dipa Pal Vs. University of Calcutta, in which the

other relevant authorities on the point are collected.

26. Mr. Deb contended that the learned Magistrate did not consider anything, although they said that they did, but merely passed an order on the allegations contained in the petitions which were devoid of all particulars. I have hereinbefore referred to the materials on which the inspectors proceeded to apply and have also quoted the relevant portions from the application for search and seizure made before the different Magistrates. The materials which were placed before me do not make out a case u/s 240A. It does not appear that any other material was placed before the Magistrate. Thus it does not appear to me that apart from relying upon what the inspectors stated in the petitions, the Magistrates considered anything more. If the statements by the inspectors are enough, then the orders by Magistrates, u/s 240A, are automatically to follow. But that is not the law as I have already indicated hereinbefore. Thus the orders for search and seizure were not made according to law and the three Magistrates did not proceed on materials which might justify such an order. The case pleaded in this Rule might merely justify an order for production of documents u/s 240 of the Act.

27. Mr. Deb also emphasised upon the following infirmities in the searches conducted, namely,

(a) absence of search witnesses in course of and during the searches,

(b) presence of persons who were not authorised to conduct the searches,

(c) absence of some of the authorised persons during the searches.

28. Now, so far as absence of search witnesses during all material time is concerned, the defect is not fatal. In the case of AIR 1946 16 (Privy Council) , Lord Porter observed:

...the presence of witnesses at a search is always desirable and their absence will weaken and may sometimes destroy the acceptance of the evidence as to the finding of the articles, but their attendance at search is not always essential in order to enable evidence as to search to be given.

In the case of Sunder Singh Vs. State of Uttar Pradesh, , Sinha, J. (as he then was) observed:

It would only affect the weight of the evidence in support of the search and the recovery. Hence at the highest the irregularity in the search and the recovery in so far as the terms of Section 103 has not been fully complied with, would not affect the legality of the proceedings.

Lastly, in the case of Radha Kishan v. State of Uttar Pradesh AIR 1963 S.C. 823 Mudhalkon, J. observed:

It may be where the provisions of Sections 103 and 165 of the Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequences ensues.

29. The searches and seizure are now complete. The alleged illegality in connection with the search may detract from the evidentiary value of the documents seized. But I do not hold that that search is vitiated by reason of the illegalities alleged and that the seized documents deserve to be returned to the Petitioner only because of the illegalities and irregularities of search and seizure. Nor do I pronounce any opinion on the evidentiary value of documents so seized.

30. Nevertheless, I hold that the Respondents co-inspectors could not make out any ground before me as to the necessity of action u/s 240A. I also hold that the Respondents Magistrates did not apply their mind and try to find out whether the co-inspectors had reasonable grounds (as opposed to nervous belief) for applying for the reliefs as they did. The learned Magistrates, it appears, considered nothing more than what the co-inspectors stated in their petitions, which was wholly uninformative, and made the orders only because the co-inspectors wanted such an order.

31. In these circumstances, the order that is called for is to quash the orders of the Magistrate as in prayer (a) to the petition. The applications before the Magistrates, u/s 240A, should be treated as pending and must be dealt with according to law. Liberty to the co-inspectors to amend the applications and therein include further and better materials in justification of the prayers for search and seizure. If they can satisfy the Magistrates objectively that there are good reasons for their belief that the documents may be altered, destroyed, mutilated or secreted, the Magistrates may make an order in their favour. If they fail to do so, the applications shall stand dismissed.

32. Until the disposal of the applications, the documents shall lie where they are present. If the applications are allowed, the documents shall be made over to the co-inspectors at whose instance the searches and seizures were made. If, on the other hand, the applications are dismissed the seized documents shall be returned to the Petitioner.

33. The operation of the order, in so far stated in the last proceeding paragraph, shall remain stayed until disposal of the appeal against my order in Matter No. 272 of 1964 and the continuance of the interim order therein made and shall suffer such variation as may be made by any order made in the said appeal.

34. Before I close this judgment, I need dispose of a minor point urged on behalf of the Respondents. It was submitted that the instant application, made after completion of search and seizure, should be dismissed on the ground of delay. In view of the decision of the Supreme Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, , I do not make much of this argument, because the delay is not much too long.

35. This Rule is made absolute to the extent indicated above. There will be no order as to costs.

