

(1976) 07 BOM CK 0009

In the Bombay High Court

Case No : Miscellaneous Petition No. 322 of 1975

Raymond Woollen Mills Ltd.

APPELLANT

Vs

Monopolies and Restrictive Trade Practices Commission and
Others

RESPONDENT

Date of Decision : 05-07-1976

Acts Referred:

Companies Act, 1956 — Section 111
Constitution of India, 1950 — Article 226
Monopolies and Restrictive Trade Practices Act, 1969 — Section 10, 11, 12, 12(1),
12(3)

Citation : (1979) 49 CompCas 686

Hon'ble Judges : R.L. Aggarwal, J

Bench : Single Bench

Judgement

R.L. Aggarwal, J.—This writ petition arises under the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "the MRTP Act"). The petitioner seeks withdrawal, cancellation and annulment of the Notice of Enquiry dated 6th December, 1974, and quashing of the order dated 25th February, 1975, passed by the 1st respondent rejecting the petitioner's application for disclosure of information, copy of the complaint and the report of the Director of Investigation, and for further and better particulars. A writ of prohibition is sought prevent the 1st and 2nd respondents from proceeding further pursuant to the said impugned Notice of Enquiry and the impugned order and from taking further steps in the matter of Restrictive Trade Practice Enquiry No. 27 of 1974. An order directing the 2nd respondent not to participate in the said enquiry and also an order directing the 1st respondent to disclose the complaint and report and to give particulars and inspection are also sought among other reliefs.

2. The petitioner has three separate undertakings, viz., Woollen Mills Division, Wool Combing Division and Engineers Files Division. The Engineers Files Division, manufactures, sells and supplies steel files in the name of J. K. Engineering Files with the brand names "SUNFLOWER", "SHER", "ROCK", etc. According to the

petitioner, the value of the assets of these Divisions and undertakings does not exceed Rs. 20 crores, and the petitioner-Company is not a single undertaking coming within the ambit of clause (a) (i) of s. 20 of the MRTP Act, and according to the best information and belief of the petitioner-Company, the J. K. Engineers Files Division is a single dominant undertaking coming within the ambit of clause (b) (i) of s. 20, and the value of the assets of the said undertaking as at 31st December, 1969, was Rs. 187.75 lakhs, and the total quantity in lakh dozens in the year 1969 and hit the target of 5.37. This information has been gathered from the relevant extract of the application dated 28th October, 1970, of the petitioner-company made to the Central government under s. 26 of the MRTP Act which was furnished during the course of the hearing. The Central Government have registered the petitioner under s. 26(2) and issued a certificate dated 12th November, 1970 (Ex. E to the petition). It was stated during the hearing that J. K. Engineers Files Division Produced or Manufactures about 50 per cent. of the files requirement of the country.

3. Respondent No. 1 to the petition is the Monopolies and Restrictive Trade Practices Commission established under s. 5 of the MRTP Act. Respondent No. 2 is the Director of Investigation appointed under s. 8. Respondent No. 3 is the Registrar, Restrictive Trade Agreements, who is appointed under s. 34 of the MRTP Act.

4. According to the petitioner, the Joint Director of Investigation, by a letter dated 21st February, 1973, addressed to the petitioner, called upon the petitioner to furnish certain information relating to J. K. Engineers Files. The Joint Director of Investigation made a detailed investigation which included discussions held at several personal meetings between the Joint Director and the representatives of the petitioner and such meetings took place both at New Delhi and at Bombay, and also included inspection of several documents of the petitioner and giving of diverse explanations and detailed information as enquired by the Joint Director from time to time during the period 21st February, 1973, till June, 1974. According to the petitioner, there was protracted correspondence between the petitioner and the Joint Director. Ultimately, the petitioner was served with the following impugned Notice of Enquiry :

"No. 20 (11) - RTP/74 Dated 5th December, 1974. Restrictive Trade Practices Enquiry No. 27 of 1974 Notice of Enquiry

(Under section 10(a)(iv) and section 37 of the monopolies and Restrictive Trade Practices Act, 1969, and Regulation 58 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974.)

In the matter of :

M/s. Raymond Woollen Mills Ltd., (J. K. Engineering Files Division) J. K. Building, Dougall Road, Ballard Estate, Bombay-1 Respondents WHEREAS the Monopolies and Restrictive Trade Practices Commission has information that the Respondent above-named (the petitioner herein) who is manufacturing, selling

and supplying, inter alia, J. K. Engineering Files with brand names of "Sunflower", "Sher", "Rock", etc. is a monopolistic undertaking engaged in the manufacture, sale and supply of the steel files; and that it is indulging in restrictive trade practices of the following nature :

- (i) Abnormally increasing the prices of the said Steel Files, by manipulating prices, and frequently revising the price lists in a manner unrelated to the increase, if any, in the cost of production, etc., with a view, inter alia, to benefit the Distributors and thereby to impose unjustified costs or restrictions on the consumers;
- (ii) Practicing discrimination in the matter of supplying, charging prices, giving discounts, giving turnover bonus and issuing credit notes between distributors and distributors and/or between distributors of various areas/territories;
- (iii) Refusing to deal with and make supplies to certain distributors;
- (iv) Favouring certain distributors by giving unjustifiably more supplies to them on the eve of price revision so as to enable them to earn more profit by selling subsequently such stocks at (revised) higher prices; and
- (v) Giving discounts and bonus calculated on the basis of turnover and issuing credit notes or giving other concessions or benefits in connection with, or by reason of, dealings.

And whereas it appears to the Commission that an enquiry u/s 10(a)(iv) and section 37 of the Monopolies and Restrictive Trade Practices Act, 1969, should be made regarding the above restrictive trade practices alleged to be indulged in by the above-mentioned Respondent, and about the Respondent's position as a monopolistic undertaking in respect of the production, sale and supply of steel files;

Therefore, in exercise of the powers conferred upon it by s. 10(a)(iv) and section 37 of the said Act, the Commission has decided to hold an enquiry at its office in New Delhi into the aforesaid restrictive trade practices and whether the above-mentioned respondent is a monopolistic undertaking in the production, sale and supply of Steel Files;

Now, therefore, notice under Regulation 58 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974, is hereby given to the respondent above-mentioned that if it wishes to be heard in the proceedings before this Commission, it should comply with the requirements of Regulations 65 and 67 of the said Regulations (a copy thereof is enclosed herewith), failing which the Commissioner will proceed with the enquiry in the absence of the respondent failing so to comply with.

Given under my signature and seal of the Commission at New Delhi, this Sixth day of December, 1974.

By Order of the Commission Sd/- (T. N. Pandey) Secretary".

5. The petitioner, without prejudice to its contentions as to the validity of the impugned Notice of Enquiry, entered appearance through its advocates, followed by an application dated 16th January, 1975, calling upon the 1st respondent, firstly, to discharge the said notice, secondly, in the alternative and without prejudice to the first prayer to furnish the information referred to in the said notice and copy of the complaint, if any, pursuant to which the preliminary investigation was made, and the report of the Director of Investigation, if any, of such preliminary investigation; thirdly, for a direction to furnish further and better particulars mentioned in the application; and, lastly, for extension of time for filing the statement of case for a period of four weeks from the date of the compliance with the order that may be made pursuant to the first, second and third prayers, and generally for other reliefs.

6. The 1st respondent, after affording a personal hearing to the petitioner, passed the impugned order dated 25th February, 1975, whereby the said application was dismissed, observing that the application was entirely unjustified and had resulted in the petitioner gaining more time for filing a reply and in delaying the enquiry into the allegation of restrictive trade practices alleged against it. The petitioner was, however, granted three weeks time from the date of the said order for filing reply.

7. Being dissatisfied with the said order dated 25th February, 1975, the petitioner filed the present petition on 17th March, 1975, under art. 226 of the Constitution of India for various writs, orders and directions mentioned above, and on the same day obtained a rule returnable on 7th July, 1975, and an ex parte interim injunction against the respondents from proceeding further with the enquiry pursuant to the impugned Notice of Enquiry and all further proceedings thereunder pending before the 1st respondent.

8. On 25th August, 1975, the 1st and the 2nd respondents filed the affidavit-in-reply dated 4th August, 1975, to the petition. The respondents inter alia, contended that it was in public interest that the enquiry relating to the restrictive trade practices and monopolistic trade practices should proceed without delay and that no rights of the petitioner are presently affected by the impugned Notice of Enquiry. It was submitted that the interim order would hold up the enquiry for several years. After making one application after another, the respondents succeeded in having the hearing expedited. Along with the present petition, two other petitions were also fixed for hearing and disposal. In Misc. Petition No. 627 of 1975 (reported infra) filed by Crompton Greaves Ltd. against the present respondents and respondents Nos. 7 to 14 who are parties to the Notice of Enquiry dated 22nd February, 1975, issued by the 1st respondent pursuant to an application made by the Registrar of Restrictive Trade Agreements under s. 10(a)(iii) of the MRTP Act, Crompton Greaves Ltd. had applied to the 1st respondent herein for delivery of further and better particulars and inspection of various published and unpublished documents, deeds, writings, reports, figures, results of studies, facts, data and information on which the Registrar of

Restrictive Trade Agreements had referred to or relied upon or craves leave to refer to and/or on which he wishes to rely. This application was dismissed by the 1st respondent herein by his order dated 2nd May, 1975. On behalf of Crompton Greaves Ltd., Mr. A. B. Divan has argued and Mr. Ashok Desai on behalf of the 11th respondent, Messrs. N. V. Philips Gloeilampenfabrieken. The other Misc. Petition No. 628 of 1975 (reported infra) is filed by Philips India Ltd., who is the 10th respondent in Crompton Greaves Petition. In Philips India's petition, the same Notice of Enquiry dated 22nd February, 1975, was directed against it. On the same lines as in Crompton Greaves, an application for delivery of further and better particulars, etc., was made and it was dismissed by the same order dated 2nd May, 1975. This petition was argued by Mr. Setalvad. In view of the common questions of law involved in these three petitions, counsel have adopted the arguments of each other for the sake of their convenience. On the opposite side Mr. Andhyarujina argued on these matters.

9. Mr. Parekh, the learned counsel for the petitioner, has raised the following contentions : (1) Under the MRTP Act, the Commission has no jurisdiction to investigate the petitioner's position and status as a monopolistic undertaking in respect of production or sale of a monopolistic undertaking simpliciter. (2) Having regard to the provisions of ss. 10, 37, 38 and 50 of the MRTP Act, the proceedings before the 1st respondent are judicial or quasi-judicial. Further, under these sections orders can be passed against the petitioner having grave economic consequences and such orders would be binding orders which, if disobeyed, would visit the petitioner with penal consequences and, in this view of the matter, the principles of natural justice must be complied with unless the statute expressly or by necessary implication departs from them. Once the principles of natural justice are to apply, the notice of enquiry must be adequate, the notice must not be vague, the notice must contain material facts and material particulars and must disclose the information as a result of which it is issued. It was urged that, in any view of the matter, having regard to the Monopolies and Restrictive Trade Practices Commission Regulations, 1974 (hereinafter referred to as "1974 Regulations"), viz. reglns. 58, 67, 15 and 77, there is an obligation that the notice of enquiry must comply with the rules of natural justice and contain adequate particulars. (3) Assuming that the interpretation on the Regulations is wrong and supposing there is a power to keep away the information from the petitioner, such Regulations are ultra vires the MRTP Act. (4) The 1974 Regulations have no application to the present case. On the other hand, the Restrictive Trade Practices (Enquiry) Regulations, 1970, are applicable. (5) Under the scheme of the statute, the function of the Director of Investigation is to investigate and make a report. This he may do for several purposes, e.g., s. 11. These are his functions. Thereafter, some other people should take over the matter, the reason being that the Director of Investigation had already made a report. Some one who is independent should be the judge. The judge and the prosecutor become the same person. He should have no audience with the Commission. The Registrar can prosecute because he is an independent person

and he has taken independent decisions in the past.

10. As against this, Mr. Andhyarujina, the learned counsel for the respondents, has made five points : Firstly, we must determine the nature, purpose and object of the MRTP Act. Secondly, how the objects of the Act are carried out and what machinery has been provided for carrying out the object ? Thirdly, is there any illegality or contravention in law in the Commission's refusal at the present stage of the proceedings (a) to give particulars, and (b) to give a copy of the report of the Director of Investigation ? Fourthly, is there any violation of the principles of natural justice at the present stage ? Fifthly, is the petitioner entitled to any relief at the present stage of the proceedings under art. 226 of the Constitution ? Should this court in exercise of its discretion give any relief to the petitioner ?

11. In order to have a proper understanding of the contentions raised on behalf of the petitioner and others, we must first acquaint ourselves with the relevant provisions of the MRTP Act and the old and new Regulations made thereunder.

12. This statute has given shape to one of the directive principles of State policy as laid down in art. 39(b) of the Constitution which provides that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. This directive principle is one of the fundamental principles in the governance of the country.

13. The preamble says that the statute is enacted to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.

14. The basic feature and the paramount consideration which pervades throughout the statute are the public interest, the common good and to keep a watch and control on the operation of the economic system of the country so that it does not result in the concentration of economic power to the common detriment.

15. The Government acts in public interest. The Commission acts in public interest. Public interest is writ large in every act and function of the Commission and the Government. Reference to "common" here, I mean in the preamble, I suppose, is to the common man, the weaker section of society, the have-nots, the consumer, but it does not intend to include the manufacturer, supplier and distributor.

16. The Monopolies Inquiry Commission had taken a bird's eye view of the special circumstances of our economic conditions such as that ours is an under-developed country, hopefully claiming to have a developing economy, a large part of the population is on the verge of starvation, the pressure of population is high, the incidence of unemployment and under-employment is very great. For

alleviating the plight of the common man, vastly increased production is essential, rapid industrialisation on which Parliament and Government have rightly set their hearts is, however, bound to bring with it even greater concentration of economic power than before. Monopolistic conditions are likely to arise and bring in their train various monopolistic practices. It proceeds to say in Chap. IX on Recommendations (Legislative) :

"Persistent shortage of commodities has generally proved too strong a temptation for many businessmen to maintain fair trade practices, and hoarding and cornering and profiteering have been common."

17. The following observations of His Lordship, Krishna Iyer J, in *Carew and Company Ltd. Vs. Union of India (UOI)*, , were referred to by Mr. Andhyarujina, the learned counsel for the Commission and Director of Investigation :

"The Constitution, in its essay in building up a just society, interdicting concentration of economic power to the detriment of the community, has mandated the State to direct its policy towards securing that end. Monopolistic hold on the Nation's economy takes many forms and to checkmate these maneuvers, the administration has to be astute enough. Pursuant to this policy and need for flexible action, the Act was enacted."

18. After referring to seemingly innocuous but really or potentially antisocial moves of dominant undertakings, His Lordship remarked (p. 136) :

"It is well known that back door techniques, and corporate conspiracies in the economic sense but with innocent legal veneer, have been used by oligopolistic organisations and mere juridical verbalism cannot give the court the clue unless there is insightful understanding of the subject which, in specialised fields like industrial economics, is beyond the normal ken or investigation of the court or the area of traditional jurisprudence."

19. With this background we go to the MRTP Act.

20. Section 2(a) of the MRTP Act, defines, "agreement" which includes any arrangement or understanding, whether or not it is intended that such agreement shall be enforceable (apart from any provision of the MRTP Act) by legal proceedings. Section 2(d) defines "dominant undertakings", sub-s. (g) "inter-connected undertakings", sub-s. (j) "monopolistic undertaking" and sub-s. (v) "undertaking". Again, sub-s. (e) of s. 2 defines "goods", sub-s. (s) "trade", sub-s. (u) "trade practice", and sub-s. (o) "restrictive trade practice" which is as follows :

"2. (o) "Restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular, -

(i) which tends to obstruct the flow of capital or resources into the stream of production, or

(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions."

21. This definition is amplified by s. 33 which requires registration of any agreement connected with production, supply, distribution or control of goods and comes within the mischief of a restrictive trade practice falling within one or more of the categories mentioned therein. These types of restrictive trade practices naturally are between manufacturers, traders or dealers. The categories mentioned in s. 33 are broadly, (i) collective discrimination-s. 33(1)(a), (ii) tying arrangements-s. 33(1)(b), (iii) exclusive dealing arrangements-s. 33(1)(c), (iv) price fixing-s. 33(1)(d), (v) granting benefits-s. 33(1)(e), (vi) resale price maintenance-s. 33(1)(f), (vii) exclusive sole distribution-s. 33(1)(g), (viii) methods, machinery and processes arrangements-s. 33(1)(h), (ix) exclusionary agreements-s. 33(1)(i), (x) price fixing with a view to eliminating a competitor-s. 33(1)(j), and any other arrangement relative to a restrictive trade practice as recommended by the Commission. Likewise, agreements making provision for services require registration-s. 33(2). Section 33(3) makes exemption for certain agreements.

22. Now, we go to s. 38. It enumerates eight circumstances, the presence of which can justify a restrictive trade practice. They are popularly known as "gateway" and not "get-away". A restrictive trade practice is deemed to be prejudicial unless it is justifiable under any of the cls. (a) to (h) of s. 38. The burden of proof is obviously on the party concerned. This is a produces one or more of the beneficial effects indicated in s. 38. It is like balancing a see-saw or the scales of a weighing machine. On one side are the benefits claimed. In the other, extent of injury to the public. The standard to judge a given trade practice is that of "public interest".

23. Section 2(i) defines "monopolistic trade practice" which means a trade practice which has, or is likely to have, the effect of, (i) maintaining prices at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods of any description or the supply of any services or in any other manner, (ii) unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services, (iii) limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed, or any service rendered, in India to deteriorate.

24. The trade practices covered by these definitions demonstrate their far-reaching effect on the economy of the country and on the day to day life of its inhabitants. It requires a combination of several evil forces to indulge in these types of trade practice. It is said that a monopolistic undertaking. They say that of all monopolistic trade practices the most condemnable is the one which shuts out competition. They overlook the side of unreasonable increase in prices and making of profits, limiting supply of goods to consumers and covering

deterioration in quality, which are essentially to the common detriment.

25. It is beneficial to touch s. 32 of the MRTP Act here. Five types of monopolistic trade practices are deemed to be prejudicial to public interest if having regard, (i) to the economic conditions prevailing in the country, and (ii) to all other matters relevant in the particular circumstances, such monopolistic trade practice has or would have the effect to unreasonably increase the cost relating to the production, supply or distribution of goods or the performance of service, or to unreasonably increase the prices at which the goods are sold or profits made, or to unreasonably reduce or limit competition or supply of goods to consumers, or to bring about deterioration in the quality of goods. The two trade practices, restrictive or monopolistic, receive separate treatment under the Act.

26. By s. 5, the Central Government, for the purposes of the MRTP Act, has established a Commission known as the Monopolies and Restrictive Trade Practices Commission consisting of a Chairman and not less than two and not more than eight other members to be appointed by the Central Government. The Chairman of the Commission shall be a person who is, or has been or is qualified to be, a judge of the Supreme Court or of a High Court and the members thereof shall be persons of ability, integrity and standing who have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Before making appointments, the Central Government has to satisfy itself that the person does not, and will not, have any financial or other interest as is likely to affect prejudicially his functions as such member. The Commission is, therefore, a high-powered body of persons of ability, integrity and standing. Under s. 8, the Central Government, in consultation with the Commission, has to appoint a Director of Investigation for making investigations for the purposes of the MRTP Act. Under s. 9, the salaries and allowances payable to the members and the administrative expenses, including salaries, allowances and pension, payable to or in respect of officers and other employees of the Commission, are to be defrayed out of the Consolidated Fund of India.

27. Section 10 provides for inquiry by the Commission into monopolistic or restrictive trade practices. This section empowers the Commission to inquire into any restrictive trade practice in any of the four channels mentioned in s. 10(a)(i), (ii), (iii) and (iv). Section 10(b) empowers the Commission to make inquiry into any monopolistic trade practice upon a reference made to it by the Central Government or upon its own knowledge or information. In so far as the inquiry under s. 10(a)(i) is concerned, s. 11 makes a special provision for it. This is in the nature of a preliminary investigation to be made by the Director of Investigation in the manner directed by the Commission for the purpose of satisfying itself (the Commission) that the complaint requires to be inquired into. This preliminary investigation is to be made before issuing any process requiring the attendance of the person against whom a complaint is made. As in the case of all preliminary investigations, so in the case of investigation under s. 11, the

preliminary investigation is required to be made without issuing any process to the person complained against. There is no provision for notice at the stage of preliminary investigation as it is meant for the purpose of satisfying the Commission as to whether the complaint should be proceeded with or not; in other words, to find out if there is a prima facie case for investigation into the restrictive trade practice alleged in a complaint from a body of persons mentioned in s. 10(a)(i).

28. Sub-section (1) of s. 12 gives specific powers to the Commission for the purposes of any inquiry under the MRTTP Act and these powers are the same as are vested in a Civil Court under the CPC while trying a suit in respect of the matters relating to summoning and enforcing the attendance of any witness and examining him on oath, discovery and production of any document or other material object producible as evidence, reception of evidence, on affidavits, requisitioning of any public record from any court of office, and issuing of any commission for the examination of witnesses. Sub-section (2) of s. 12 makes a provision that any proceeding before the Commission is to be deemed to be a judicial proceeding within the meaning of ss. 193 and 228 of the Indian Penal Code, and the Commission is deemed to be a civil court for the purposes of s. 195 and Chap. XXXV of the Code of Criminal Procedure, 1973). Sub-section (3) of s. 12 empowers the Commission to require any person to produce before an officer of the Commission such books, accounts or other documents relating to any trade practice, the examination of which may be required for the purposes of the MRTTP Act, and such books, accounts, or other documents can be kept by an officer of the Commission for such examination, and to furnish any specified information as respects the trade practice as may be required for the purposes of the MRTTP Act or such other information as may be in the possession of any person in relation to the trade carried on by any other person.

29. Sub-section (1) of s. 17 says that the hearing of proceedings before the Commission shall be in public. Sub-section (2) thereof makes a provision for hearing in camera of the proceeding in respect of any offence or matter of confidential nature.

30. Section 18(1) provides that subject to the provisions of the MRTTP Act, the Commission shall have the power to regulate the procedure and conduct of its business the procedure of Benches of the Commission, and the delegation to one or more members of such powers or functions as the Commission may specify. Although sub-s. (1) of s. 18 commences with the words "Subject to the provisions of this Act", no provision as such has been pointed out to me which requires to be considered in this context. Sub-section (2) of s. 18 is an extraordinary provision in the sense that it empowers the Commission to determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceeding before it are allowed to be present or to be heard either by themselves or by their representatives or to cross-examination witnesses or otherwise to take part in the proceeding. For the purposes of the

present case, the significance of sub-s. (2) of s. 18 is that Parliament has empowered the Commission to make a departure from the principles of natural justice. This power indicates that the Commission can work out its own procedure for the efficient conduct of its proceedings and in doing so it can abrogate the principles of natural justice. Section 19 makes provision that the Commission shall cause an authenticated copy of every order made by it in respect of a restrictive trade practice to be forwarded to the Registrar who shall have it recorded in such manner as may be prescribed.

31. Chapter IV deals with monopolistic trade practices. Section 31(1) provides that where it appears to the Central Government that one or more monopolistic undertakings are indulging in any monopolistic trade practice, or that monopolistic trade practices prevail in respect of any goods or services, that Government may refer the matter to the Commission for an inquiry and the Commission shall, after such hearing as it thinks fit, report to the Central government its findings thereon. It is useful to read sub-s. (4) of s. 37 along with it, which provides that notwithstanding anything contained in the MRTP Act, if the Commission, during the course of an inquiry under sub-s. (1) of s. 37, finds that a monopolistic undertaking is indulging in restrictive trade practices, it may, after passing such orders under sub-s. (1) or sub-s. (2) of s. 37 with respect to the restrictive trade practices as it may consider necessary, submit the case along with its findings thereon to the Central Government with regard to any monopolistic trade practice for such action as that Government may take under s. 31. There has been a considerable controversy as to the interpretation of these provisions and, therefore, I propose to deal with the same separately. Suffice it to note at this stage that the Commission is enjoined upon not to overlook the fact that, (i) there is a monopolistic undertaking, and (ii) such a monopolistic undertaking is indulge in restrictive trade practices. Sub-section (4) of s. 37 provides the guidelines as to the manner in which the Commission should act in respect of such information. It has been noted that s. 32 by a deeming fiction makes certain monopolistic trade practices to be prejudicial to the public interest. Likewise, s. 38 says that a restrictive trade practice shall be deemed to be prejudicial to the public interest unless the Commission is satisfied that the restriction is not unreasonable in the circumstances enumerated in cls. (a) to (h) of sub-s. (1) of s. 38 and also what is called the balancing clause mentioned therein.

32. Chapter VI bears the title "Control of certain restrictive trade practices" and s. 37(1) leads to an investigation into restrictive trade practices by the Commission. The Commission is empowered to inquire into any restrictive trade practice, whether the agreement, if any, relating thereto has been registered under s. 35 or not, which may come before it for inquiry and, if, after such inquiry it is of opinion that the practice is prejudicial to the public interest, the Commission may, by order, direct that the practice shall be discontinued or shall not be repeated, and the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such

manner as may be specified in the order. The words of s. 37(1) are plain and unambiguous and have not been the subject-matter of any controversy, save that it has been argued on behalf of the petitioner that an investigation commenced under s. 10 is a continuation of the same investigation even after the notice of enquiry has been issued under sub-s. (1) of s. 37. On other hand, it has been the contention on behalf of the 1st and 2nd respondents that the enquiry under s. 10 is in the nature of a preliminary investigation for the purpose of finding out whether there is a prima facie case or not, and after the Commission has been satisfied that a prima facie case exists, it is followed by a notice of enquiry under s. 37(1), and the two investigations are not of the same rank and they serve different purposes. There was considerable argument on behalf of the petitioner both in the present petition and in the companion petitions that since the notice of enquiry mentions the number of the enquiry and the same number of enquiry appears in the correspondence prior to the notice of enquiry under s. 37(1), this indicates that the enquiry indicated under s. 10 was continued and had that not been the case, the Commission would not have retained the same number of enquiry throughout. In my opinion, these factors are not decisive of the question as to whether the enquiry is one or the same or continuation of the enquiry instituted under s. 10. The investigation or enquiry at that stage of s. 10 has nothing to do with the investigation or enquiry contemplated under s. 37(1). The two investigations are different. After the first investigation is concluded, the second investigation in the manner laid down by s. 37(1) commences. The enquiry under s. 37(1) ripens only after the enquiry under s. 10(a) is over. Enquiries contemplated under s. 10(a)(i), (ii), (iii), and (iv) are purely for the purpose of satisfying the Commission as to whether a case for investigation into restrictive trade practices under s. 37(1) is made out and, if so, the next step in the investigation is provided under s. 37(1). It is also to be noted that s. 11 itself expressly says that the preliminary investigation is to be made before issuing any process requiring the attendance of the person against whom an enquiry is launched under s. 10(a)(i). It is also to be borne in mind that in all matters of preliminary investigation, the first requisite is to find out as to whether there is any substance in a complaint in the hands of the investigating machinery. It is only in cases where a case is made out or reasonable grounds exist that further proceedings are adopted against the wrong-doer and not otherwise. It is to be noticed that under sub-s. (2) of s. 44 power of search is given to Inspectors appointed by the Central Government for the purpose of making investigation into the affairs or undertakings. If regard could also be had to the 1974 Regulations giving various powers to the Director of Investigation and his staff both under Chaps. II and IV, in my opinion, the proper view is the one expressed earlier that the enquiry under s. 10 is separate from the enquiry under s. 37(1). The fact that the Director of Investigation or the Registrar uses the same enquiry number while issuing notice of enquiry or by making reference to s. 10(a)(i) or (ii) or (iii) or (iv) read with s. 37(1) cannot alter the position. All that may be said is that it is convenient for the Director of Investigation and the Registrar and the Commission to continue to use the same

number after having assigned the number at the initial stage.

33. Chapter VIII relates to offences and penalties and having regard to the quantum of fine indicated in these provisions, it shows that Parliament in imposing these penalties wanted to impose stiffer fines in order to deter others from contravening the provisions of the MRTTP Act. These sentences indicate the gravity of the offences.

34. Section 55 gives an aggrieved party the right to appeal to the Supreme Court against any order made by the Central Government under Chap. III or Chap. IV or by the Commission under s. 13 or s. 37. The grounds on which the appeal lies to the Supreme Court are those as provided in s. 100 of the C.P.C. Section 100, C.P.C., is a provision for second appeals. The three grounds enumerated therein are, (a) the decision being contrary to law or to some usage having the force of law, (b) the decision having failed to determine some material issue of law or usage having the force of law, and (c) a substantial error or defect in the procedure provided by the Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits. The word "decision" signifies a final order passed either by the Central Government or the Commission. The fact that the right to appeal is provided to the highest forum of the land indicates that the right of appeal should be only at one stage and that would be when final decision is given.

35. Sub-section (1) of s. 66 empowers the Commission to make regulations for the efficient performance of its functions under the MRTTP Act. The words of this sub-section show that Parliament intended to leave it to the Commission to make such regulations as it may like to frame for the efficient performance of its functions. The Commission is made the master of its own procedure and is vested with the rule making power. Having regard to the fact that the MRTTP Act came into force on 1st. June, 1970, the Commission at the initial stage framed the Restrictive Trade Practices (Enquiry) Regulations, 1970, which comprised of 47 Regulations. This was supplemented by Regulations of 1971 numbering 15 in all. These Regulations were replaced by the 1974 Regulations with effect from 13th July, 1974. A study of 1970 and 1971 Regulations on the one hand and the 1974 Regulations on the other, shows that the Commission found that for the efficient performance of its functions, the Regulations of 1970 and 1971 were inadequate and, therefore, the Commission came forward with comprehensive Regulations in 1974. Sub-section (2) (d) of s. 66 in particular provides that the Regulations be made with regard to the duties and functions of the Registrar and the Director of Investigation.

36. At this stage, it is convenient to deal with the fourth point raised by Mr. Parekh that 1970 and 1971 Regulations are applicable in his case and not 1974 Regulations. It may be noticed that there is no substantial difference between the two Regulations with regard to the provision for obtaining particulars. Regulation 24 of the 1970 Regulations provides for application for directions, and under regln. 27 on the hearing of the application, directions for delivery of

further and better particulars were to be given by the Commission. Likewise, in the 1974 Regulations, substantially the position is the same. Regulation 10 of the 1971 Regulations dealt with material gathered by the Director to be brought on record and stated that any material gathered by the Director may be brought on record at such stage of the proceedings as the Commission may think fit. The Commission shall, however, communicate its gist of the said material to the parties concerned and give them an opportunity to rebut the material gathered by the Director. Substantially the same position exists under regn. 21 (2) of the 1974 Regulations. Regulation 21 (1), however, states that the reports of the Director of Investigation and any other material or evidence collected by him shall be treated as confidential, which was not the case in 1970 and 1971 Regulations. The word "report" was also not used in the old Regulations. Under the old Regulations, the Registrar and not the Director of Investigation had asked for some information. The impugned order is dated 6th December, 1974. The 1974 Regulations came into force from 13th July, 1974. The enquiry contemplated under s. 37 is initiated by the impugned order dated 6th December, 1974, after the 1974 Regulations came into force and, therefore, the Regulations of 1970 and 1971 cannot apply to the case of the petitioner. Assuming that the 1970 and 1971 Regulations apply, there was no right in the petitioners to a copy of the report or materials collected by the Director of Investigation, and, therefore, there was no question of a vested right which could be carried over under regn. 87 (2) which says that the repeal of the 1970 and 1971 Regulations shall not affect the previous operation of the Regulations so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued or incurred under the said Regulations, or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability and all investigations and legal proceedings shall be continued or enforced as if the present Regulations had not been made. In any view of the matter, the whole controversy as to the applicability of the old Regulations is set at rest by virtue of the amendment of regn. 87 (2) of 1974 Regulations with effect from 26th February, 1976, which says that a pending enquiry is to be continued in accordance with the 1974 Regulations. Admittedly, the enquiry against the petitioner (Raymonds) is pending before the Commission and the same would be continued under the new Regulations. In view of the latest position of the Regulations, the decision of the Delhi High Court in Premier Tyres Ltd. and Others Vs. The Monopolies and Restrictive Trade Practices Commission, New Delhi and Others, , would have no application, assuming that the view expressed in that case is correct. Mr. Andhyarujina, the learned counsel for the Commission, has pointed out that it is not a correct judgment. Although there was a lot of arguments regarding the applicability of the old Regulations, but after the authenticity of the amendment to regn. 87 (2) of the 1974 Regulations with effect from 26th February, 1976, was established by Mr. Andhyarujina, no attempt was made to rebut the present position.

37. Coming to the 1974 Regulations, Chap. II makes provision for preliminary investigation on receipt of a complaint under s. 10(a)(ii), (iii), (iv) & (b) and for submission of report under regln. 19. The report of the Director of Investigation is to be treated as confidential under regln. 21. It bars disclosure of the report to any party. The Commission, however, can direct the disclosure of such a report at any stage of an enquiry. Along with the report, the Commission can also direct the disclosure of any evidence or other material collected by the Director of Investigation. Such a disclosure of the report, evidence or other material may be made either wholly or partly. The Commission is required to communicate to the parties concerned such parts of the report, evidence or material which it chooses to bring on record. It further enjoins upon the Commission to give the parties concerned an opportunity to rebut the material so brought on record. The Director of Investigation in turn is given an opportunity to give his say to such rebuttal. Under regln. 23, where the Commission, after considering the report of the Director of Investigation, is of the opinion that an enquiry shall be held into a restrictive trade practice, it shall so order and such enquiry shall be held in accordance with the procedure prescribed in Chap. IX of the 1974 Regulations.

38. Regulation 58 under Chap. IX provides that proceedings under sub-s. (1) of s. 37 of the MRTP Act shall be initiated by a notice to the person against whom allegations of restrictive trade practices are made stating that the Commission proposes to hold an inquiry into the alleged trade practices. After service of the notice, the respondent who wishes to be heard is required to enter an appearance in the office of the Commission. Regulation 67 provides that every respondent who has entered an appearance shall within four weeks of his entering appearance deliver to the secretary a reply to the notice which shall include, (a) particulars of each of the provisions of s. 38 of the MRTP Act on which he intends to rely, and (b) particulars of the facts and matter alleged by him to entitle him to rely on such provisions. The respondent is also required to file a list of documents on which he relies, whether such documents are in his possession or power or not, and if the documents are not in his possession or power he is required to state in whose possession or power they are. A copy of such reply is required to be furnished to the Director of Investigation or the Registrar. Under regln. 68, every respondent is required to produce for inspection the documents specified in the list of documents to the Director of Investigation or the Registrar and permit them to make copies thereof. The respondent is, however, entitled to claim privilege for any of the documents mentioned in the list. The Director of Investigation is then required to file his rejoinder under regln. 69. No pleading subsequent to this rejoinder can be presented except by the leave of the Commission may at any time require a pleading or a supplemental pleading from any of the parties and fix a time for presenting the same, as laid down in regln. 70. Regulation 71 provides for striking out of the whole or any part of a reply, rejoinder, pleading or supplemental pleading which appears to the Commission to be frivolous, vexatious or irrelevant and in this connection the provisions of r. 16 of O. VI of the C.P.C. are made applicable.

Regulation 72 provides that the Commission may at any time amend any defect or error in any proceeding including notice of enquiry and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or dependent on such proceedings. By the same allow any party to alter or amend his reply to the notice of enquiry, rejoinder, pleading or supplemental pleading in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy. Again, where an application for amendment is made before a notice of enquiry is served on the respondent and where in the opinion of the Commission the amendment applied for is a material one, the Commission may give notice of application to the respondents before allowing the amendment, and where in the absence of the respondents the Commission grants any amendment in a form materially different from that of which notice has been given to the respondents, a copy of the amendment shall be served on the respondent.

39. Under regln. 74, the Director of Investigation is required to make an application to the Commission for directions with regard to the preparations for the final hearing. A notice of such application for directions is required to be served upon all the parties to the proceedings. On the hearing of the application, the Commission shall give such directions as it considers necessary and without prejudice to the generality of the foregoing, the Commission may give such directions as it may think fit as to, (a) the amendment of the notice of hearing or any representation, a answer or reply, (b) the delivery of further and better particulars, (c) the delivery of interrogatories, (d) the admission of any facts or documents, (e) the discovery or further s discovery of any documents and inspection thereof, (f) the admission in evidence of any documents, (g) the mode in which evidence is to be given, (h) the taking and recording of any evidence including the appointment of a Commissioner for that purpose, (i) an investigation of the cost in respect of any class of goods, in producing or supply any goods or in applying and process of manufacture to goods, and the manner in which the result of such investigation is to be brought before the Commission at the final hearing, and the procedure laid down in these regulations with regard to these matters shall be followed.

40. Another important regulation is regln. 77 relating to the application of the CPC. By this regulation, subject to the provisions of sub-s. (1) of s. 12 of the MRTP Act, the provisions of Orders XI, XII, XIII, XVI, XVII, XVIII, XIX and XXVI of the CPC are made applicable mutatis mutandis except in so far as they are inconsistent with the express provisions of the Regulations. In this connection, it is also necessary to bear in mind regln. 15 which relates to the effect of non-compliance and application of the CPC to matters not provided. It says that failure to comply with any requirement of these Regulations shall not invalidate any proceedings unless the Commission so directs. It further says that in respect of any matte for which no provision has been made in the Regulations, the provisions contained in the CPC shall mutatis mutandis apply to the proceedings

before the Commission in so far as such provisions are not inconsistent with any of the provisions expressly made in the MRTP Act or in these Regulations.

41. There was considerable argument on behalf of the petitioner in the present petition as well as on behalf of the other petitioners appearing in companion matter that rr. 2 and 4 of O. VI, CPC, are applicable. Rule 2 says that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, etc. Rule 4 states that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. Relying upon this r. 4, it was submitted that better particulars are to be given by the Commission before filing reply to the notice. It was contended that regulation 15 provides that the provisions of the CPC, 1908, shall mutatis mutandis apply to the proceedings before the Commission and, therefore, this rule is applicable. In my opinion, these rules can have no application to the proceedings before the Commission. As pointed out above, the enquiry is to be held in accordance with the procedure prescribed in Chap. IX of the 1974 Regulations. Chapter IX makes a special procedure and regln. 77 finds displacement under it. By that regulation only, Orders XI, XII, XIII, XVI, XVII, XVIII, XIX and XXVI of the CPC are made applicable unless inconsistent with the express provisions of the Regulations. Thus, O. VI stands excluded from application in this context. Regulation 15 is placed in Chap. I which is general in its application. That regulation has to be applied in respect of matters for which no provision is made and the CPC must not be inconsistent with any of the provisions expressly made in the MRTP Act or in the Regulations. Moreover, this would be inconsistent with regln. 74 (3). Chapter IX makes a self-contained procedure for proceedings under s. 37 (1) and (4) of the Act. It lays down the various stages of the proceedings and also fixes the stage for delivery of further and better particulars as after reply to the notice has been filed and the Director of Investigation has filed his rejoinder. This regulation is manifestly inconsistent with O. VI, CPC. Therefore, in the light of these Regulations, full and better particulars are obtainable on the hearing of an application for directions and not at the stage before filing a reply to the notice as was strenuously urged on behalf of the petitioners.

42. Coming to the second point urged by Mr. Parekh regarding the application of the principles of natural justice in the manner indicated in his proposition, the learned counsel argued that the alleged restrictive trade practices mentioned in the impugned notice of enquiry must be with some precision, if not 100 per cent. precision, but with some measure of precision in order to give a reply. Regulation 74 does not apply before the filing of a written statement/reply. Learned counsel contended that it has no application at the initial stage and applies after the pleadings are completed. The petitioner must have the particulars before filing its

reply, he submitted. On the basis of the principles of natural justice, the impugned notice of enquiry must be adequate and not vague, it must contain material particulars and must disclose the information as a result of which the impugned notice is issued. Mr. Parekh read para. 74 on audi alteram partem from Halsbury's Laws of England, Vol. I, 4th edn., page 90. This paragraph distills various propositions from cases decided between 1723 and 1972. Part of para. 75 on "prior notice" from the same volume at page 92 was also read out.

43. The question that confronts the court is the application of these magnificent principles of natural justice to the facts of each case. The question before me is a simple one and the issue cannot be confused by reference to decided cases on their own facts. Do the principles of natural justice require that the notice should contain the particulars and information as demanded by the petitioner ? Would the principles of natural justice be offended if in the light of the express provisions contained in the 1974 Regulations full and better particulars are given at a stage of the application for directions ? Are the principles of natural justice contravened because the Commission has refused to disclose the report which is not referred to in the impugned notice of enquiry and so far not relied upon or brought on record by the Commission ? It is well settled that the extent and the application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon, (i) the nature of the jurisdiction conferred on the authority, (ii) the character of the rights of persons affected, (iii) the scheme and policy of the statute, and (iv) the relevant circumstances disclosed in a particular case.

44. Almost the same principle is reiterated in the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , while adopting the observations in Suresh Koshy George Vs. University of Kerala and Others, . On page 157, para 20, it was observed as follows :

"..... the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstance of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

45. Again, in Union of India (UOI) Vs. Col. J.N. Sinha and Another, , their Lordships of the Supreme Court emphasized that rules of natural justice are not embodied rules, nor can they be elevated to the position of fundamental rights, and observed as follows (p. 42) :

"As observed by this court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , " the aim of rules of natural justice is to secure justice or to put it

negatively to prevent miscarriage of justice. These rules can operate only in areas not converted by any law validly made. In other words, they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principle of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

46. I will not refer to the various cases relied upon by Mr. Parekh in support of his contention that the notice of enquiry must be adequate and not vague and that the notice must contain material facts and material particulars and that a copy of the report of the Director of Investigation should be made available before filing a reply to the notice of enquiry. In *Surath Chandra Chakrabarty Vs. State of West Bengal*, the appellant was appointed Station Officer in the Bengal Fire Service in 1943. On 19th July, 1949, a communication containing various charges such as circulating false rumours regarding the retrenchment policy of the Government, taking an active part in a conspiracy to implicate the Director of Fire Service, West Bengal, in a false cases by planting fire-arms in his office and injuring him by planting a time bomb in his car, was sent to him. On being found guilty, he was given a show cause notice why he should not be dismissed from the service of the Government to otherwise suitably punished departmentally. It was common ground in that case that a statement of the allegations on which each charge was based was never sent to the appellant. He contended that the allegations were vague, indefinite and lacking in material particulars and pointed out that unless the charges were made specific to the point and certain full details with date, time, place, and person, etc., were given, it was not possible for him to meet them properly. Ultimately, he was removed from service. Thereafter, the appellant filed a suit challenging the order of his removal from service and prayed for various reliefs. The learned judge found that no particulars and other necessary details were given in the charges and they were vague resulting in non-compliance with r. 55 of the Civil Service (Classification, Control and Appeal) Rules and the necessary particulars were not supplied in spite of the repeated objections of the appellant to the charges being vague and indefinite. The Division Bench of the Calcutta High Court reversed the decision of the learned single judge. Their Lordships of the Supreme Court, on a consideration of the charges, found that each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It was precisely for this

reason that Fundamental r. 55 provided that the charge should be accompanied by a statement of allegations. The whole object furnishing the statement of allegations was to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up a defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied that statement of allegations and that the charges were extremely vague and indefinite. The Supreme Court was of the view that there was no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material fact and particulars not having been supplied to him, and restored the order of the trial court. This case is of no assistance to the petitioners. In the present case, the notice contains the necessary ingredients constituting the alleged restrictive trade practices. The allegations are sufficiently definite and capable of being understood as considered by me hereafter. Moreover, the Commission, on a consideration of the application of the petitioners for full and better particulars, has taken the view that the petitioner's demand is either for instances of restrictive trade practices or for evidence of such instances. The impugned notice of enquiry in the present case is neither bare nor vague, nor indefinite, nor unintelligent, nor lacking in particulars. The stage provided for further and better particulars has not yet arisen in our case because there is a special code prescribing the procedure for holding the enquiry.

47. Reliance was also placed on passage from Mulla's Code of Civil Procedure, 13th edn., Vol. I, at page 700, where the learned commentator considered the functions of pleadings under O. VI. The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules (relating to pleadings) was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing. (See *Thorp v. Holdsworth* [1876] 3 Ch D 637 Per Jessel M.R.). These considerations are irrelevant in a case of the present type which is governed by its own code.

48. Reliance was placed on *Humphries & Co. v. Taylor Drug Company* [1888] 39 Ch D 693. In that case, the plaintiff carried on the business of a wholesale dealer in drugs and chemical preparations. The defendant also carried on a similar business. The plaintiff's action was for restraining the defendants from using the word "Herb line" which the plaintiff alleged was a colourable imitation of his registered trade-mark "Herb line", and from passing off the defendant's goods as and for the plaintiff's goods. According to the plaintiff, the use of the word "Herb line" was an infringement of the plaintiff's said trade-mark and the same was calculated to induce, and had in fact induced, divers persons to purchase the defendant's preparation as and for the goods of the plaintiff, and the defendant had made considerable profit by selling goods, not being the plaintiff's goods,

under the name "Herb line." The defendant by his statement of defence denied the infringement and also specifically denied the statement permitting the use of the word "Herb line". After delivery of the statement of defence, the defendant took out a summons asking that the plaintiff might be ordered to deliver to him particulars of the names and addresses of the divers persons alleged to have been induced to purchase the defendant's preparation "Herb line" as and for the goods of the plaintiff as mentioned in para. 6 of the statement of claim. The court allowed the application. The court was of the view that there could be no hardship on the plaintiff by ordering to give the names and addresses of the divers persons who had been induced to purchase the defendant's preparation as and for the goods of the plaintiff. The court observed that the object of particulars was to get rid of relay whenever it could be reasonably done. This authority also is of no assistance. The stage for particulars is expressly provided in the present case after the pleadings are closed. The Commission has found that stage reasonable and workable having regard to the nature of the enquiry.

49. In AIR 1937 146 (Privy Council) fraudulent flotation and fraudulent career was one of the grounds for winding up of the company. The company's appeal before the Privy Council failed and in dismissing the appeal, it was observed that great difficulty was occasioned both to persons charged with fraud or other improper conduct, and to the tribunals which were called upon to decide such issues, if the litigant who preferred the charges was not compelled to place on record precise and specific details of those charges. In that case, the petitioner ought not to have been allowed to proceed with his petition and seek to prove fraud, unless and until he had, upon such terms as the court thought fit to impose, amended his petition by including therein full particulars of the allegations which he intended to prove. In that case, fraud had not been alleged in the petition for winding up. The allegations were made in the affidavit of evidence and the whole matter was fought in the High Court on those lines without any objection being taken. Those authority is again hardly of any assistance. In the present case, the allegations are relating to restrictive trade practice and the constituent facts have been mentioned in the notice.

50. Reliance was next placed on a decision of the Allahabad High Court in State of Uttar Pradesh and Others Vs. Salig Ram Sharma, This was an appeal against an order of the single judge allowing a petition under art. 226 of the Constitution and quashing the order of the Inspector-General of Prisons, Uttar Pradesh, dismissing the respondent from service. The charge against the respondent was not that he had altered the entry (he admitted this) but that he had done it "with ulterior motives". In this connection, the learned judges observed that this charge was too vague. In their view, it was not enough to charge a Government servant with having done and act "with ulterior motives"; he must be told what precisely was the motive attributed to him, otherwise he would not be in a position to rebut the accusation. In that view of the matter, the learned judges held that the charge was vitiated by vagueness and that defect rendered the punishment imposed on the respondent illegal. In the present case, the notice

uses the words "etc.", "inter alia" in item (i). In view of these expressions, Mr. Parekh contended that item (i) also suffers from the vice of vagueness and it is not possible for the petitioner to deal with this charge. Now, if this charge is read as a whole, it cannot be said to be vague. the allegation is that the petitioner indulges in restrictive trade practices by abnormally increasing the prices of the steel files by manipulating prices and frequently revising the price lists in a manner unrelated to the increase, if any, in the cost of production., "etc." with a view "inter alia" to benefit the distributor and thereby to impose unjustified costs or restrictions on the consumers. In considering this allegation, it must be borne in mind that the investigation was instituted under s. 10(a)(iv) of the MRTP Act which is upon the Commission's own knowledge or information. The expressions "etc." and "inter alia" in the context in which they appear do not render the allegation vague, which otherwise gives the necessary material and particulars of the restrictive trade practice complained of. In my opinion, the allegation in item (i) does not suffer from the vice of vagueness as urged on behalf of the petitioner.

51. Reliance was placed on headnote (b) in Rampiyari Khemka Vs. Commissioner of Income Tax, West Bengal and Others, . In that case, a notice under s. 33B of the Indian I.T. Act, 1922, to revise the assessment was served on the assessee. In that notice, the reasons given for revision of assessment were that on certain enquiries the existing assessment was found to be erroneous and prejudicial to the interest of the revenue. The assessee remained absent and as ex parte order under s. 33B was passed by the Commissioner, alleging that the assessee was in collusion and conspiracy with the ITO concerned, that there were interpolations in the record and that the matter was decided by the ITO fraudulently. It was never disclosed to the assessee as to what enquiries were made and what was the exact information received. It was held by the learned single judge that the failure on the part of the Commissioner to disclose the particulars of the information he obtained as a result of the enquiries was in violation of the rules of natural justice. Just because the assessee did not appear at the hearing, it did not mean that allegations of fraudulent conduct or the interpolation of records, etc., could be gone into and decided by the Commissioner without any notice whatever to the assessee. Undoubtedly, the Commissioner was given the power under s. 33B itself to make necessary enquiries, but if he was going to rely on any such information prejudicial to the assessee, that information must be disclosed to the assessee although not necessarily the source. Even assuming that the assessee was to be deemed to have been served with notice and took the risk of an ex parte order, it must be an order based upon the notice that was issued. Since the Commissioner at the hearing found that there were serious allegations of fraud, collusion and conspiracy, interpolation of records, etc., he should not have proceeded further without bringing these matters to the notice of the assessee and giving her an opportunity of answering the serious charges. The hearing should have been adjourned for that purpose. It was of no use to say that the assessee was not prejudiced by the order or that, had she appeared at the hearing, the further charges could have been communicated to her.

Relying on these observations, it was urged that the principles of natural justice require the disclosure of full facts. In the case before me, the necessary facts constituting the alleged restrictive trade practices have been referred to in the notice. The Regulations make specific provisions about the manner in which the enquiry under s. 37 of the MRTP Act is to be gone through by the Commission. At this stage of the enquiry, it cannot be said that the petitioner has not been given a reasonable opportunity in the sense of the disclosure of full facts. The facts of that case are in no way similar to the facts of our case. In the present case, there is no violation of the rule of natural justice. The Regulations by themselves provide that the stage for full and better particulars is after the pleadings are complete.

52. In *Dulichand Kheria and Others Vs. Collector of Central Excise and Land Customs*, , an order of confiscation of seized betelnuts passed against the petitioner by the Collector of Central Excise and Land Customs under s. 167(8), Sea Customs Act, was quashed on the ground that it was in violation of rules of natural justice if the petitioners were not given an opportunity to explain the reports of experts regarding quality, nature and origin of the betelnuts on which the order was passed. That court observed that as domestic tribunals, they were entitled to make enquiries from various channels, but if they wished to use the result of such enquiries to the prejudice of the accused, such results must be made known to the accused and he must be given opportunity to deal with the same whether he may ask for personal hearing or not. On the basis of this decision, it was contended that the Commission had already applied its mind to the report. The Commission had referred to the report, and therefore, the Commission should not have refused to furnish copy of the report. In the case before me, the report of the Director of Investigation has not been made use of and, therefore, there can be no question of the petitioner being prejudiced or the principles of natural justice being violated on that score. The Commission has merely looked at the report in order to form an opinion whether an enquiry should be held into restrictive trade practices alleged against the petitioner and no more. The report can be brought on record at any stage of the enquiry at the discretion of the Commission. In the present case, the enquiry has in fact not commenced in view of the present writ proceedings adopted by the petitioner. As and when the Commission brings the report in record, the regulation casts a duty on the Commission to give the parties concerned an opportunity to rebut this material. This decision is also of no help to the petitioner.

53. Reliance was also placed on *Charandas Malhotra Vs. Assistant Collector of Customs and Superintendent Preventive Service and Others*, , for the proposition that the charges must be clear, specific and unambiguous. I think that this proposition was neither challenged nor could be challenged. It is always a question of fact in a given case as to whether the charges are clear or vague, specific or unspecific, and ambiguous or unambiguous. The allegation of restrictive trade practices mentioned in the notice does not suffer from the vice of vagueness as considered hereafter.

54. In *Sovachand Mulchand Vs. The Collector of Central Excise and Land Customs and Others*, , reliance was placed on head notes (B) and (C). In that case, both in respect of the show cause notice and the final order, the Collector of Customs acted merely on information supplied and reports made to him by other employees or officers of his department. The information and the reports were never placed before the accused and the accused never had opportunity of dealing with them. It was held that the Collector had drawn inferences on the motives or intentions without giving a fair opportunity to the accused to offer explanations as to the facts on record. Principles of natural justice demanded that the accused should have had reasonable opportunity of explaining its actions. The facts of that case are entirely different from the facts of the present case. In our case, the Regulations do provide for a fair opportunity if the Commission chooses to rely upon the report. The report is not on record and, therefore, no question of making use of it arises at this stage.

55. Reliance was also placed on a decision of the supreme Court in *Dhakeswari Cotton Mills Ltd. v. CIT* [1954] 26 ITR 775; AIR 1955 SC 65. In that case, the Supreme Court had to consider the provisions of s. 23 (3) of the Indian I.T. Act, 1922, and held that both the ITO and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion because the court found that in arriving at an estimate of gross profit rate, the ITO and the Tribunal had violated certain fundamental rules of justice, firstly, by not disclosing to the assessee what information had been supplied to it by the departmental representative : secondly, by not giving any opportunity to the company to rebut the material furnished to it by him, and, lastly, by declining to take all the material that the assessee wanted to produce in support of its case, with the result that the assessee had not had a fair hearing. The ratio of this decision has not application to the facts of the case before me. The grievance of the petitioner has been rejected by the Commission and the Commission has indicated that the stage for full and better particulars had not arisen and, therefore, the petitioner's application has been rejected by a speaking order. At the present stage, I do not find any denial of a fair hearing nor breach of any fundamental rules of justice calling for interference in exercise of the extraordinary jurisdiction.

56. Reliance was also placed on another decision of the Supreme Court in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, , headnote (c). Their Lordships of the Supreme Court observed in connection with the CPC. Procedure is something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. It is also observed that there must be exceptions and where they are clearly defined they must be given effect to. But

taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle. Relying upon this decision, it was urged that the CPC contains principles of natural justice and since regln. 15 makes the provisions of the CPC applicable, the whole of that Code including O. VI, r. 4 is applicable. In making this submission, learned counsel overlooked the provisions of regln. 77 and also the provisions of regln. 15 itself. As indicated earlier, the provisions of O. VI, r. 4, are not applicable as they are expressly omitted and are otherwise inconsistent with regln. 74(3).

57. In *Rajinder Kumar Sharma Vs. The Vice Chancellor, Punjab University and Others*, the petitioner was not allowed to sit for the examination because his sessional marks were deficient in some of the subjects. The petitioner, notwithstanding this information, entered the examination hall and sat for the examination making a wrong representation that he had lost the roll number issued by the principal. As a result of this, in the result notification dated September 15, 1963, the petitioner's result was shown as cancelled because he had been declared by respondent No. 3 ineligible for taking the examination. The grievance of the petitioner in short was that his name was struck off the roll without any notice or opportunity of hearing or showing cause having been given to him. The stand taken on behalf of the respondent was that all relevant facts were before the authorities and it was only a question of interpreting the regulations, and, therefore, the petitioner was not entitled to any hearing before passing the impugned order. The other justification pleaded by the respondent was that the petitioner had admitted in his statement that he was guilty of playing fraud on the authorities. In this connection, the Punjab High Court observed that (p. 273) :

"One of the elementary principles of that curious entity known as 'natural justice' is that a man has a right to be heard *audi alteram partem*, a maxim of utmost moment in our democratic development. This rule, which is not a technical conception with a fixed content unrelated to circumstances, place and time, but which merely represents respect enforced by law or that feeling of just treatment which, as a segment of morality, runs through the entire fabric of our constitutional set-up embraces the whole notion of fair procedure and due process. The applicability of this rule is not excluded merely because the authority making the impugned order may have formed an opinion that the affected person has allegedly been guilty of some fraudulent act. To give every victim a fair hearing is just as much a sound canon of good administration as it is of good legal procedure. True, this court cannot control administrative discretion exercised by the University authorities within proper spheres in imposing penalty in cases like the present; but it can certainly see at least that the discretion exercised is judicial and that it is not exercised without consideration of both sides of the case. Nothing is more likely to conduce to just and right decision than the habit of giving a hearing to an affected party. The elements of fair procedure are indispensable in our democratic set-up and ought to be followed in spheres of

both legal and administrative justice."

58. Certainly, these principle must be followed. But in the present case, in my opinion, it is not possible to take the view that the petitioner is being denied a fair opportunity of hearing in the manner urged on its behalf. The Commission has found that the allegations of restrictive trade practices contain he relevant constitutive facts. The remarks of the Commission in the impugned order indicated that the grievance of the petitioner does not appear to be genuine and seems to be made with the object of gaining more time for filing a reply and in delaying the enquiry into the allegations of restrictive trade practices. From the nature of the enquiry under s. 37 of the MRTP Act, a party continues to carry on with its trade practices unless an order to discontinue or not to repeat the same is passed by the Commission. It is, therefore, in the interest of a party to postpone practices so as to draw the maximum gains.

59. In *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another*, the Supreme Court had to consider the question of adequate opportunity to Kanraj, against whom an enquiry was proposed to be held by the Society. The correspondence which passed between Kanraj and the Society showed that Kanraj was taking a very unreasonable and undesirable attitude and his conduct in persistently demanding representation by a stranger and on that account refusing to participate in the enquiry deserved to be condemned. The Supreme Court said that that circumstance, however, would not make the enquiry valid, unless it be held that an adequate opportunity was given to Kanraj to meet the charges framed against him. It was found that the charges which were served on Kanraj were very vague and he had not opportunity to give a reply to them. The material which was available in support of those charges was also never disclosed to him. The mere fact that Kanraj did not appear on that date fixed for the enquiry would not in those circumstances, satisfy the requirement of the principles of natural justice that he should have been told of the details of the charges and the material available in support of those charges should have been disclosed to him. In so far as the present case is concerned, there are no circumstances, any way near to those in the case before their Lordships of the Supreme Court. As said before, the notice in the present case discloses constitutive facts relating to restrictive trade practices and it cannot be said that the petitioner is being denied an opportunity of being heard or he is not being afforded an adequate opportunity. Assuming that there is some justification in the claim of the petitioner that the notice lacks some particulars, even then the petitioner can submit his reply on the basis of the allegations in the present notice and, after full and better particulars are obtained at the proper stage envisaged under regln. 67, they can apply to the Commission for filing a supplemental pleading for which provision is made under regln. 72. On behalf of the petitioner, it was contended that to allow an application for filing as supplemental pleading or an amendment of the reply is all in the discretion of the Commission and the Commission may or may not grant such amendment and, even if it does, it may saddle the petitioner with heavy costs. Such allegations

are ridiculous and the apprehensions are unfounded. It must be borne in mind that the Commission is a high-powered body.

60. Another decision of the Supreme Court is *State of Gujarat Vs. R.G. Teredesai and Another*, in which case the question that arose was if the enquiry officer had made recommendation in the matter of punishment to the officer concerned for imposing penalty or punishment and such recommendation was likely to affect the mind of the punishing authority even with regard to penalty or punishment to be imposed on such officer, it should be made available to the delinquent officer. It was observed that the requirement of a reasonable opportunity would not be satisfied unless the entire report of the enquiry officer including his views in the matter of punishment were disclosed to the delinquent servant. Relying upon this decision, it was urged that the report of the Director of Investigation has an influence upon the mind of the Commission about the restrictive trade practice and as such whatever affects the mind of the Commission, the petitioner must know it. The principle laid down in that case has not application. Under the MRTP Act and the Regulations, the Director of Investigation submits a report to the Commission in order to enable the Commission to satisfy itself whether a case was made out for an enquiry under s. 37 or not. The report made by the Director of Investigation is a part of the preliminary investigation into the alleged restrictive trade practices. The purpose of the reports is to enable the Commission to form an opinion and nothing more. The Regulations clearly make a provision for bringing the report on record at any stage of the proceedings if the Commission finds it necessary to do so and at that stage the party is afforded an opportunity. Unless the report is brought on record, it cannot be made use of by the Commission. Therefore, having regard to the express provision of the Regulations, there is no merit in the contention that the petitioner is entitled to a copy of the report before filing the reply to the notice. The stage at which the enquiry commences under s. 37 cannot be mixed up with the earlier stage at which a preliminary investigation is conducted for the primary object of finding out a case about the alleged restrictive trade practices. This decision, therefore, is also of no assistance to the petitioner.

61. The last decision on the point is of the Privy Council in *B. Surinder Singh Kanda v. Government of Federation of Malaya* [1962] AC 322 (PC). In that case, it was held that the failure to supply the appellant with a copy of the report of the board of inquiry, which contained matter highly prejudicial to him and which had been sent to and read by the adjudicating officer before he sat to enquire into the charge, amounted to a failure to afford the appellant "a reasonable opportunity of being heard" in answer to the charge within the meaning of art. 135(2) of the Constitution and to a denial of natural justice. At page 337, it is observed thus :

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have

been made affecting him : and then he must be given a fair opportunity to correct or contradict them."

62. It is further observed thus :

"It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing."

63. The real question is one of the applicability of these principles to the facts of the present case. In the present case, a copy of the report made by the Director of Investigation has not been furnished to the petitioner. Admittedly, such a report has been submitted by the Director of Investigation to the Commission, and the Commission has made use thereof for the purpose of forming an opinion before launching an enquiry under s. 37. It is considered or read by the Commission for that purpose and no more. There has been no denial of any opportunity to the petitioner either to correct or contradict the report, much less a denial of a fair opportunity. No use been made of the report in the enquiry under s. 37(1). We can again remind ourselves of the fact that the enquiry has not started as yet.

64. In all these cases cited by Mr. Parekh, what was called into question was the final decision or result of the enquiry. These cases have no bearing on the type of the enquiry contemplated under s. 37(1)(4) which is governed and regulated by its own special procedure. The Regulations expressly provide that the stage for further and better particulars is after the pleadings are complete and when an application for directions is made, unlike the stage set under O. VI, r. 4 of the C.P.C.

65. Likewise, a copy of the report has been refused by the Commission because of its own regulations which lay down that the report is confidential and it can be brought on record by a specific order of the Commission and not otherwise. The guidelines provided by Suresh Koshy George Vs. University of Kerala and Others, , or Kraipak's case, AIR SC 150, or Union of India (UOI) Vs. Col. J.N. Sinha and Another, referred to above, actually clinch the matter and there was no need to go into the ritual of case law. The notice of enquiry sufficiently tells the petitioner the case they have to meet. On the petitioner's own admission, the notice was preceded by discussions at several meetings between the Joint Director and the representatives of the petitioner at New Delhi and Bombay and by the giving of diverse explanations and detailed information by the petitioner between February, 1973, and June, 1974. According to the petitioner, even a protracted correspondence has taken place on the subject-matter. With this background and having regard to the plain language of the allegations of

restrictive trade practices, the petitioner's complaint about particulars has no truth and no merit. The contents of the allegations will receive further consideration at another stage of the judgment. On the question of report, the petitioner has no right to be supplied with a copy of the report, nor has it been made use of by the Commission during the course of the enquiry under s. 37(1). The plea is that unless the report is given, the petitioner cannot make any effective representation. The report is so far used for finding out a prima facie case ex parte and thereupon either for the time being or for all times it exhausts its purpose. In this view of the matter and in the light of express provisions of regn. 21, the demand for a copy of the report is meritless. This apart, there is a built-in safeguard provided by the regulations both as regards particulars and the report. They by themselves display the spirit of the principles of natural justice in working out the scheme, policy and purpose of this economic piece of legislation founded on the directive principles of State policy. The observance of principles of natural justice as understood to be applicable to trials before courts or departmental/domestic enquiries are unsuitable and unfit for the kind of enquiry which the Commission undertakes under s. 37. If I were to work out requirements of natural justice on the facts and circumstances of the present case and in this type of enquiry, they seem to be three-fold. Firstly, telling the nature of the restrictive trade practices indulged in; secondly, not to make use of any document or material without giving an opportunity to controvert or explain the same; and, thirdly, affording a reasonable hearing. Running parallel to them are the Regulations which are designed to meet the needs of the enquiry envisaged under the MRTP Act. In the face of these express provisions, the principles of natural justice have to step aside. Here, we must again remind ourselves of the above-quoted observations from the cases of Suresh Koshy George Vs. University of Kerala and Others, , A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , and Union of India (UOI) Vs. Col. J.N. Sinha and Another, . The requirements of natural justice do not remain fixed, nor do they remain the same in every case and in all circumstances.

66. A case on the point will bring home this aspect of the matter. In Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, , three medical students were expelled from the college for two academic sessions, i.e., 1972-73 and 1973-74. The appellants lived in a hostel attached to the college. There was another hostel nearby for girl students. In the night, the appellants and other male students entered into the compound of the girls' hostel and were seen walking without clothes on them. They went near the windows of the rooms of some of the girls and these naked boys tried to pull the hand of one of the girls. Some five naked boys then climbed up along the drain pipes to the terrace where few girls were doing their studies. On seeing them, the girls raised on alarm following which the naked students ran away. The girls recognised four of them - three of them being the appellants and the fourth being one Upendra Prasad Singh. A complaint was received by the principal from 36 girl students alleging the facts. The principal decided to hold an enquiry and

entrusted it to three members of the staff. At the enquiry the students were called one after the other and to each of them the contents of the complaint were explained, without disclosing the names of the girls who made the complaint, and a charge was given to them on the lines that they trespassed into the girls' hostel, made unauthorised entry into the girls' hostel and they were thus accused of gross misconduct. They were asked to show cause and were directed to file the reply immediately, and that non-compliance would lead to ex parte decision. Each one of the students was given paper and pen and asked to write down whatever he had to say. The students uniformly denied having trespassed into the girls' hostel or having misbehaved with them as alleged. They added that they were in their own hostel at the material time. Before the appellants and other students were called in, the enquiry committee had called 10 girls from among those who had complained and their statements were recorded. It was thought unwise to record their statements in the presence of the appellants. Ultimately, the enquiry committee recommended expulsion of those four students from the college and the principal awarded that punishment. The appellants' chief contention was that the rules of natural justice had not been followed. The enquiry was held behind their back. The witnesses who gave evidence against them were not examined in their presence. There was no opportunity to cross-examine the witnesses to test their veracity. The committee's report was not made available to them. The Patna High Court held that the rules of natural justice were not inflexible and in the circumstances and the facts of that case, the requirements of natural justice had been satisfied. The Supreme Court confirmed the decision remarking that the High Court was plainly right. The circumstances of the case were that the complaint related to a serious matter as it involved not merely internal discipline but the safety of the girl students living in the hostel under the guardianship of the college authorities. The college was in the position of local parent is and its responsibility towards the girls was greater than that towards the boys. The matter could not be lightly brushed aside as it could encourage the male rowdies to increase their questionable activities. This could compel the parents to remove the girls from the hostel as well as from further education. Police could not be called in because the girls out of sheer fright and harm to their reputation would not co-operate with the police. Nor a regular enquiry was feasible because the girls would not have ventured to make statements for fear of retaliation and harassment thereafter. The plan of enquiry was reasonable and secured reasonable opportunity to the appellants to state their case. In conclusion, Palekar J. observed (p. 1264) :

"Rules of natural justice cannot remain the same applying to all conditions. We know of status of India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda

being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However, unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the principal was a wise one."

67. The unusual facts of the above decision illustrate the point that the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon several factors and may differ in different circumstances. The securing of reasonable opportunity to the appellants to state their case was found to be enough to satisfy the requirements of natural justice in that case. The principles of natural justice did not obstruct or block the passage, which justice demanded, to do justice or to serve the ends of justice or to see that justice was done. The second contention of Mr. Parekh must, therefore, fail in the light of the above discussion.

68. The first proposition formulated by Mr. Divan, learned counsel appearing for Crompton Greaves Ltd. in the companion matter, was that the Commission, while holding an enquiry under s. 37, is a Tribunal within the meaning of art. 136 of the Constitution. As a corollary, it is exercising the judicial power of the State given to it under the statute (the MRTTP Act). In support of his submission, he relied upon (1) *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, ; (2) *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, (3) *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, (4) *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, (5) *Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others*, and (6) *Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others*, . These decisions relate to Industrial Tribunal, Election Tribunal, Adjudicating Authority other than a court vested with judicial power of the State, Central Government exercising appeal power under s. 111 of the Companies Act, Customs officers acting under s. 167 of the Sea Customs Act, and the Custodian-General acting under s. 27 of the Administration of Evacuee Property Act. These Tribunals and authorities have been considered to be Tribunals for the purpose of art. 136 of the Constitution. These Tribunals show different manifestations of the judicial powers of the State. Reliance on art. 136 of the Constitution and these authorities does not enhance the case of any of the petitioners in view of the appeal provided for under s. 55 of the MRTTP Act. Article 136 of the Constitution does not confer a right of appeal to any party upon the decision of any Tribunal, but it confers the discretionary power on the Supreme Court to grant special leave to appeal from any order of the Tribunal. These decisions illustrate the grounds on which the Supreme Court could interfere with decisions arrived at by Tribunals. It is well settled that

Tribunals exercising quasi-judicial functions are not courts and they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence.

69. The second proposition was that the Commission had all the judicial trappings and that the procedure approximates to a court procedure for trial and in any event the proceedings initiated by a notice of enquiry under s. 37 are judicial and quasi-judicial. In view of these two propositions, Mr. Divan contended that by necessary implication arising from the provisions of the MRTTP Act, the enquiry under s. 37 at all stages must conform to the principles of natural justice and fair-play and cannot depart from them. We have examined the various provisions of the MRTTP Act and the Regulations made thereunder. In the first place, the procedure adopted by the Commission does not contravene the principles of natural justice. I am not satisfied that the procedure adopted is not conducive to reach a just decision. In the second place, the matter is to be judged in the light of the constitution of the body which has to function under the scheme and policy of the statute. In the third place, the Commission has laid down the manner in which a reasonable opportunity has to be given to the party against whom the enquiry is being held. Now, if this procedure is not consistent with court procedure, it cannot be condemned in the name of principles of natural justice. The procedure suggested on behalf of the petitioners, namely, that further and better particulars should be furnished as demanded by them and disclosure of the report of the Director of Investigation, information and other material before filing reply to the notice of enquiry, would thwart the enquiry and involve in postponing it indefinitely. This would frustrate the purpose of the legislation. By reading into the MRTTP Act and Regulations, the suggested procedure would amount to supplanting the law and not supplementing it. Despite the majestic conception of natural justice on which great argument was made on behalf of all the petitioners, I have not been convinced that the present cases of Raymond, Crompton Greaves and Philips India Ltd. involve any real question of violation of the principles of natural justice at all. I think the frontiers of the doctrine of natural justice cannot be further advanced in the present cases. Here the repeatedly cited passage of Tucker L.J. in *Russell v. Duke of Norfolk* [1949] 1 All ER 109 is of great guidance :

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirement of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

70. These observations have been quoted with approval in *Suresh Koshy George Vs. University of Kerala and Others*, and in *Wiseman v. Borneman* [1971] AC

297; [1970] 75 ITR 652, Pearlberg v. Chakravarty [1972] 1 WLR 534 and Furnell v. Wangarei High Schools Board [1973] AC 660. On these observations, Mr. H. M. Seervai in his Constitutional Law of India, 2nd edn., Vol. II, para. 16.69, at page 788, comments thus :

"The frequent citation of this passage in recent cases marks a recognition of the fact that if the earlier decisions leaned heavily in favour of administrative convenience and efficiency at the expense of natural justice, the extended application of natural justice, or the duty to act fairly, ought not to swing to the other extreme and sacrifice administrative efficiency and dispatch, or frustrate the object of the law in question."

71. With reference to the speech of Lord Hailsham in Pearlberg's case [1972] 1 WLR 534, the learned commentator in para. 16.80, at page 800 says :

"The increasing sophistication with which, according to Lord Hailsham, Courts have applied the principles of natural justice, emphasises the fact that natural justice is meant to secure justice, and justice may require that normal requirements of natural justice should be modified or abrogated"

72. Mr. Andhyarujina relied upon the following observations of Lord Devlin in *In re K. (Infants)* [1965] AC 201 :

"But a principle of judicial inquiry, whether fundamental or not, is only a means to an end. If it can be shown in any particular class of case that the observance of a principle of this sort does not serve ends of justice, it must be dismissed; otherwise it would become the master instead of the servant of justice."

73. The Regulations pertaining to further and better particulars and disclosure of the report and other material as framed by the Commission clearly show that the considerations of fair-play and fair opportunity are dear to its heart. In framing these Regulations, the Commission's guiding star was the efficient performance of its functions. It was not bound to embrace the rules of the CPC of furnishing particulars at an earlier stage as in courts. It is empowered to abrogate principles of natural justice under the statute establishing it. I think these Regulations fulfil the same paramount object to do justice, to secure justice and be the servant of justice as the doctrine of natural justice means. The enquiry before the Commission is not a trial. There is no prosecution. There is no accused. The Commission acts in public interest. Public interest requires that the investigation should be completed as speedily as possible. These Regulations are meant to secure that goal. In any view of the matter, the principles of natural justice must yield and bend in the light of these Regulations, so that the Commission can function properly and there is a speedy enquiry to enable the Commission to pass a "cease and desist" order in relation to the restrictive trade practices found prejudicial to the public interest.

74. Mr. Andhyarujina referred to (1) *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, , (2) *Suresh Koshy George Vs. University of Kerala and Others*, , (3)

Local Government Board v. Arlidge [1915] AC 120 (HL), (4) Union of India (UOI) Vs. T.R. Varma, , (5) State of Mysore Vs. S.S. Makapur, , (6) Province of Bombay Vs. Kusaldas S. Advani and Others, , (7) Jankinath Sarangi Vs. State of Orissa, , (8) State of Uttar Pradesh Vs. Om Prakash Gupta, , (9) Shadi Lal Gupta Vs. State of Punjab, , (10) Eardley Dudley Baxter Vs. T.L. Bhagtiani and Others, , (11) Union of India (UOI) Vs. Jyoti Prakash Mitter, , (12) Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others, , (13) S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, , (14) Parry-Jones v. Law Society [1969] 1 Ch D 1 , (15) Dr. Tribhuwan Nath Vs. The State of Bihar and Another, , (16) Lekhram Saini v. Union of India, [1969] 1 LLJ 382 and (17) In re K. (Infants) [1965] AC 201.

75. From the foregoing cases, these propositions on natural justice are formulated : (1) Principles of natural justice apply only where the statute or statutory provisions permit their application. If the statute expressly or by necessary implication excludes the application of any principle of natural justice, there is no question then of the application of natural justice and the statute or statutory regulation in question must be given effect to. (2) The requirement of natural justice depends on the facts and circumstances of the case, the nature of the enquiry, the law under which the authority is acting, the subject-matter dealt with by the authority and the constitution of the authority. There is no fixed formula for the application of the principles of natural justice. (3) Stating it broadly and without intending it to be exhaustive, the rules of natural justice require that the person accused should know the nature of the accusation made, secondly, that he should be given an opportunity to state his case and, thirdly, the authority should act in good faith. No materials should be relied on against him without his being given an opportunity of explaining them. (4) Tribunals or authorities exercising quasi-judicial powers are not courts and, therefore, they are not bound to follow the procedure for trial of actions in a court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is used and give him a fair opportunity to explain it. (5) The principles of natural justice are only a means to an end, viz., to reach a just decision or to prevent miscarriage of justice. If the non-observance of these principles do not cause a failure of justice or do not deflect the course of justice or cause no prejudice to a party, no interference is called for from the court at the instance of the party. (6) In considering whether a party is prejudiced by the non-observance of principles of natural justice what is to be considered by the court is not the possibility of prejudice but whether actual prejudice has been caused. Therefore, the court will not interfere to arrest pending proceedings wherein no decision is taken to the prejudice of a party on the mere apprehension that the party may be prejudiced or on the speculation of prejudice in ultimate order. (7) In the cases under consideration, namely, the present petition and the other companion petitions, there is no violation of the principles of natural justice because (a) Statutory Regulations prescribe the conditions of the disclosure of

the report of the Director of Investigation as well as demand for particulars. Therefore, there is no question of the application of the principles of natural justice as such Regulations govern these matters. (b) Even apart from the application of Regulations, the principles of natural justice do not require that the materials or report preceding the intimation of an enquiry should be disclosed unless the same is acted upon by the Commission to the prejudice of a party. (c) Considering the nature of restrictive trade practices, monopolistic trade practices and the powers and functions of the Commission, the notices initiating the enquiries in the present cases disclose sufficient particulars. (d) Without prejudice to the foregoing submissions, it is submitted that there is no prejudice to the petitioners caused at the present stage of the enquiries at all as particulars may be disclosed later and the report of the Director of Investigation may be disclosed if relied upon by the Commission to the prejudice of the petitioners. Whether the petitioners will be prejudiced or not can only be found out at the conclusion of the enquiry. To assume that the petitioners will be necessarily prejudiced in the ultimate order made by the Commission is to speculate on possibilities which may never happen.

76. I think the propositions are sufficiently clear and much gain cannot be made by referring to each of the large number of cases cited in support of these propositions. On behalf of the petitioners, neither Mr. Parekh nor Mr. Divan nor Mr. Setalvad challenged these propositions, but nevertheless they maintained that on the facts and circumstances of their cases, the petitioners are entitled to the particulars asked for and a copy of the report of the Director of Investigation and there is no question of actual prejudice being caused because prejudice is inherent. Mr. Parekh submitted that prejudice is there per se. He also urged that the principle of natural justice by itself is to be achieved and it is an end. All required particulars and the report must be disclosed at the threshold. I am not impressed by these contentions. The entire theory of obtaining particulars and the report at the threshold seems absurd on the facts and circumstances of the case. The application of the principles of natural justice is not a question of observance of a formula or a mere technicality. None of the petitioners have been able to show any real and effective prejudice by the alleged non-observance of the principles of natural justice highlighted by them.

77. In this connection, two of the decisions of their Lordships of the Supreme Court can be referred to here out of the decisions cited by Mr. Andhyarujina. In *Jankinath Sarangi Vs. State of Orissa*, , in dealing with the argument that the principles of natural justice were violated because the appellant, Janki Nath Sarangi, a non-gazetted Government servant working as a Sub-Divisional Officer in the Public Works Department of the Orissa State, was ordered to be dismissed as a result of disciplinary proceedings against him, because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt, Hidayatullah C.J. observed :

"There is no doubt that if the principles of natural justice are violated and there is a gross case, this court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right."

78. In *State of Uttar Pradesh Vs. Om Prakash Gupta*, , the Supreme Court affirms that an enquiry under s. 240 of the Government of India Act, 1935, must be conducted in accordance with the principles of natural justice. Hegde J. said *State of Uttar Pradesh Vs. Om Prakash Gupta*, :

"But those principles are not embodied principles. What principle of natural justice should be applied in a particular case depends on the facts and circumstances of that case. All that the courts have to see is whether the non-observance of any of those principles in a given case is likely to have resulted in deflecting the course of justice."

79. Confining myself to the present petition of *Raymonds*, they have failed to show that they are prejudiced by the alleged non-observance of the principles of natural justice as discussed hereafter.

80. Mr. Divan urged that the petitioners must make the application at the earlier stage, that is, before filing of the reply, and this would be in keeping with the principles of natural justice contained in O. VI, r. 2, C.P.C. I am not impressed by this argument. The application of O. VI, r. 2, C.P.C., is deliberately omitted in the Regulations. In framing regln. 77 which excludes the application of various Orders, including Os. I to X, C.P.C., there is a rationale behind it. Order I refers to parties to suits, O. II to frame of suit, O. III to recognised agents and pleaders, O. IV to institution of suits, O. V to issue and service of summons, O. VI to pleadings generally, O. VII to plaint, O. VIII to written statement and set-off, O. IX to appearance of parties and consequence of non-appearance, and O. X to examination of parties by the court. A reading of Regulations preceding regln. 77 in Chap. IX shows that the Commission has designed the Regulations in a manner to suit the nature, scope and purpose of the enquiry. The type of provisions made under Os. I to X, C.P.C., relating to framing of suits and institution of suits, are found to be unsuitable for the type of the enquiry envisaged under s. 37 of the MRTP Act. Wherever the Commission has felt that the provisions of the C.P.C. should be expressly made applicable, it has chosen to do so for its proper functioning. The stage at which full and better particulars can be asked for has been shifted to a later stage in the enquiry under s. 37. There seems to be a sound reason behind it as pointed out by Mr. Andhyarujina. He submitted that the purpose of the enquiry under s. 37 is not to narrow down the issue but to broaden it. Learned counsel also pointed out that by the C.P.C. standard an unusual procedure is laid down. The party at the outset, while filing his reply to the notice, is required to disclose his documents and give inspection to the Director of Investigation, so that he can look into them and formulate his rejoinder. This approach is necessary because restrictive trade practices are matters of secrecy. A party relying on any of the gateways must justify with

supporting evidence, facts, figures and data which would be normally in its own possession. The Director of Investigation would not be able to challenge the say of the party unless the material is made known to him.

81. Wherever the Commission thought that it was necessary to follow the age-old procedure of supplemental pleading, power to amend and notice, it has done so. The Commission is the master of its own procedure, submitted Mr. Andhyarujina, and, in framing its procedure, the Commission has thought it proper to entertain applications for full and better particulars at a stage after the pleadings are closed unlike in suits brought before ordinary courts which permit furnishing of full and better particulars before filing a written statement and even in some extraordinary cases, the plaintiff is also entitled to ask for particulars if they happen to be within the special knowledge of a defendant.

82. In support, Mr. Andhyarujina referred to the decision in *Sachs v. Specimen* [1888] 37 Ch D 295 at page 303. In that case, an action was brought by a principal against his stock-brokers. In his statement of claim to open settled accounts, the plaintiff alleged fraud and that he was unable to give particulars before discovery. An application by the defendants for particulars was ordered to stand over till a statement of defence had been put in. It was observed that a defendant by delivering his statement of defence does not waive his right to particulars. The relevant observations at page 303 are :

"Then it is suggested by the notice of motion that the defendants are embarrassed by the form in which this pleading is framed. But how can it be said that the defendants are embarrassed by not knowing these details ? The plaintiff has told them in his statement of claim that he has not the means of giving these details. They, on the other hand, are the persons who carried through the transactions, and have in their possession the books containing the full accounts; therefore they have full knowledge and means of knowledge, and can show precisely what the cases are, if any, in which they did do what the statement of claim alleges they did. I do not see how they can possibly be embarrassed by not obtaining from the plaintiff the information they have in their own possession. Of course I can see well enough why they press for these particulars. If the plaintiff were obliged to condescend upon particulars, and to specify the instances in which the defendants have done what he charges them with, the result might be that from his imperfect knowledge he would not be able to point out in the particulars some cases in which they had actually done what he says they have done; and inasmuch as, after particulars were given, their defence would be addressed only to those points, the ignorance of the plaintiff might relieve the defendants from being held responsible as to certain matters with respect to which they are open to the charge contained in the statement of claim."

83. In *Waynes Merthyr Company v. D. Radford & Co.* [1896] 1 Ch D 29, in an action by a colliery company against coal merchants, the plaintiffs alleged that they had lost business by reason of the fraudulent acts of the defendants, giving one specific instance of fraud in their statement of claim (which was admitted by

the defendant), and alleging that "on divers other occasions" the defendants had taken orders from "divers other persons" for coal from the plaintiffs' colliery, and fraudulently supplied coal not purchased from the plaintiffs, it was observed that there is no hard and fast rule as to the class of cases in which particulars will be ordered to be delivered before discovery, or discovery to be given before particulars; the court will exercise its discretion upon all the circumstances in each case. It was held that as the defendants had the means of ascertaining from their books whether other frauds of the kind alleged had been committed, which the plaintiffs had not, the defendants were not entitled to particulars before giving discovery.

84. Instances can be given to show that in framing the Regulations the Commission has picked up such of the well-established rules of practice from the C.P.C. even from Orders which have been specifically excluded. Order VIII, r. 9, deals with subsequent pleadings. A similar provision has been designed by the Commission under regln. 70 suitable to its requirements, because under O. VIII, r. 9, no pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the court and upon such terms as the court thinks fit, but the court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same, whereas under regln. 70 no pleading subsequent to the rejoinder shall be presented except by the leave of the Commission upon such terms as the Commission may think fit, but the Commission may at any time require a pleading or supplemental pleading from any of the parties and fix a time for presenting the same. Again, O. VI, r. 17, deals with amendment of pleadings, and a similar provision is to be found in regln. 72 (2). Although O. VI is specifically excluded from regln. 77, nevertheless the Commission has found the desirability of embracing the provisions of O. VI, r. 17, which says that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties; whereas regln. 72 (2) says that the Commission may at any time or stage of the proceedings allow any party to alter or amend his reply to the notice of enquiry, rejoinder, pleading or supplemental pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy.

85. Again, reference can be made to the inclusion of the principle analogous to O. VI, r. 16, in regln. 71. Order VI, r. 16, relates to striking out pleadings at any stage of the proceedings or amendment of any matter in any pleading which any be unnecessary or amendment of any matter in to prejudice, embarrass or delay the fair trial of the suit; while under regln. 71 the Commission may, on the application of any party, strike out the whole or any part of a reply, rejoinder, pleading or supplemental pleading which appears to the Commission to be frivolous, vexatious or irrelevant and may in that event allow further time for the

delivery of a reply, rejoinder, pleading or supplemental pleading. In framing regln. 71, the provisions of O. VI, r. 16, CPC, have been specifically made applicable as if they are included in the same. Again, regln. 64 embodies the principle laid down in O. I, r. 8, CPC. Likewise, regln. 65 makes provision for appearance of parties which is dealt with in O. IX, CPC.

86. Mr. Divan next contended that regln. 74 must be construed as applicable for all stages; otherwise it would be contrary to judicial proceedings and discharge of judicial functions and would be ultra vires. Mr. Divan referred to the case of *State of Kerala Vs. K.M. Charia Abdullah and Co.,* , in which it is observed that the power to frame rules is conferred by the Act upon the State Government and that power may be exercised within the strict limits of the authority conferred. If in making a rule, the State transcends its authority, the rule will be invalid, for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised. I am in respectful agreement with this principle. It is not possible to accept Mr. Divan's argument that regln. 74 (3) is invalid on the ground that the Commission has no authority, to frame it or that it defeats the principles of natural justice or it goes against fundamental concepts or is inconsistency with the scheme of the Act, as contended. Mr. Divan also urged that regln. 74 (3) and regln. 15 and O. VI, r. 2, CPC should be reconciled. This argument is misconceived. Chapter IX of the 1974 Regulations, which lays down the procedure for enquiry under s. 37, specifically omits O. VI, r. 2, and in view of the express provision contained in the Regulations omitting O. VI, r. 2, the question of reconciliation does not arise.

87. The learned counsel also relied on a decision of the Supreme Court in *New Samundri Transport Co. (P) Ltd. Vs. The State of Punjab and Others,* . The appellant in that case was a private limited company carrying on transport business over a long period. The company was granted 33 stage carriage e permits for various routes. It had a sanctioned fleet of 35 transport vehicles. On receipt of several reports and complaints from various sources, the State Transport Commissioner issued a notice to show cause as to why departmental action by way of suspensions/cancellation of stage carriage permits under s. 60 of the Motor Vehicles Act, 1939, should not be taken against the company in respect of offences of a serious nature committed by the company. The Supreme Court found that a manifestly wrong procedure in a departmental action was obvious on the face of the notice resulting in violation of the principles of natural justice. In issuing the impugned notice, the State Transport Commissioner had failed to particularise with reference to each permit the particular conditions for breach of which action was sought to be taken in connection with a particular permit, which was found to be the minimum requirement of s. 60 of the Motor Vehicles Act. The notice was found to be a bald one making no reference to any particular permit for cancellation or suspension of which action had been taken. The Supreme Court remarked that it was as if all the 33 permits were going to be

suspended or cancelled. From the list of prosecutions, it was found that only 15 vehicles were involved and most of the cases were of overloading and some of the cases related to non-accompaniment with the vehicles of registration certificates and other documents. In some cases, against certain vehicles, the time schedule was not kept and certain trips were missed. The Supreme Court also observed that what was important in a departmental action of this type for violation of condition of permit was that it must relate to the particular permit appertaining to the concerned vehicles. It was of utmost importance that charges were made with reference to each permit in clear terms in order to enable the permit-holder to furnish his explanation. Proviso to s. 60 (1) which requires mandatory compliance is nothing short of a reasonable opportunity to the permit-holder, to furnish his explanation. Unless, therefore, the breaches of conditions or other allegations are particularised with reference to each permit in the show cause notice, such notice was clearly invalid and no action could be taken under such a notice. The court found that this had resulted in violation of the principles of natural justice ingrained in the proviso to s. 60 (1) of the Motor Vehicles Act. This decision is of no assistance and has no application to the facts of the present case. In the case before me, the notice cannot be said to be bare bones or bald one by any stretch of imagination. It gives the necessary constituent facts relating to the restrictive trade practices indulged by the petitioners. There is no question of violation of the principles of natural justice merely because the stage for full and better particulars is set after the pleadings are closed. This is the express provision in the Regulations and, therefore, the argument that there is a breach of the principle of natural justice cannot hold water. Regulation 77 of the 1974 Regulations clearly omits O. VI of the CPC. Otherwise it would be inconsistent to import O. VI, r. 2 into the Regulations as the same would be inconsistent with the express provisions of the Regulations. The only stage set for full and better particulars is under regn. 74 (3) and if that be the case, there is no question of contravening the principles of natural justice. The learned counsel for the Commission also emphasized that what is intended to be enquired into under s. 37 is not the instances of the restrictive trade practices but the practice itself.

88. Another contention of Mr. Divan was that the Commission has gone wrong in failing to exercise jurisdiction. He submitted that on a true construction of regn. 74 (3), there is no bar to the jurisdiction of the Commission to entertain and grant an application for particulars before the pleadings are closed or deemed to be closed. He further submitted that on a true construction of regn. 15, O. VI of the CPC applies and there is clear jurisdiction in the Commission to entertain and decide an application for particulars at any stage. In view of the discussion made in the foregoing paragraphs, it is not possible to place the construction suggested by Mr. Divan. The stage for particulars is the one set under the Regulations and not under O. VI of the CPC as sought to be argued in diverse ways.

89. In connection with the third contention that Regulations are ultra vires the MRTTP Act, Mr. Parekh urged that the commission has made these Regulations in

a manner which subverts or undermines the principles of natural justice. The argument runs that according to sub-s. (1) of s. 66, the regulations are to be made consistent with the principles of natural justice and the Commission, therefor, cannot make regulations in breach of the principles of natural justice or repugnant to the principles of natural justice. It was submitted that regln. 7, 16, 18 and 24 of the Regulations of 1970 and reglns. 21, 28, 67, 69 and 74 of the 1974 Regulations which prescribe a procedure whereby a mere notice containing some general allegations of the impugned trade practice may be issued, unaccompanied by a statement of case, and which forces the person against whom the notice is issued, to file his defence by way of a statement of case or reply and subsequently permits the complainant or the Registrar or the Director of Investigation or the Government who is supporting the notice, to file a statement of case, are really subsequently permits the complainant or the Registrar or the Director of Investigation or the Government who is supporting the notice, to file a statement of case, are reply subverting the principles of natural justice and are repugnant to the principles of natural justice. It was next urged that regln. 74 in so far as it purports to prevent disclosure and inspection of documents which constitute information on which notice is issued before a party files its reply is itself contrary to the principles of natural justice and is, therefore, nulls and void. According to the petitioner, it is a principle of natural justice that the documents, which constitute information, basis and foundation, on which a notice is issued, ought to be disclosed and inspection given before a party is called upon to file its reply. Regulation 21 is outside the regulation making power of the Commission purported to be made under the powers conferred by ss. 18 and 66 of the MRTP Act and does not fall within the ambit of these two sections. According to the petitioner, in particular, the non-disclosure of report does not fall within the power to regulate the procedure and the conduct of its business or efficient performance of functions under the MRTP Act or any other matter for which regulations are required to be made. It was next submitted that regln. 21 and the impugned order dated 25th February, 1975 (Ex. D to the petition), refusing to the petitioner the disclosure and inspection of the complaint, report and all other documents, which constitute the information of the Commission, is contrary to the principles of natural justice and is ultra vires the Act and the Constitution of India and as such null and void and inoperative in law. The Commission is clearly empowered to made regulations for the efficient performance of its functions. It has not Act. Even rules of natural justice can be abrogated as laid down under s. 18 in regulating its procedure. If it has to act effectively, beneficially and make orders speedily, it must be the master of its own procedure. It has been noticed earlier that its procedure does not defy the basic majestic rules of natural justice. The third contention is, therefore, devoid of any merit.

90. Coming to the fifth contention of Mr. Parekh that after the Director of Investigation has made a report, some other person like the Registrar of Trade Practices who is an independent person should take over from him, it was

submitted that the only function of the Director of Investigation is to conduct certain investigations pursuant to the provisions of the MRTP Act and he is neither a prosecutor nor a person authorised or entitled to participate in any enquiry under s. 10 or s. 37 of the MRTP Act. The Commission has no power to make any regulation authorising the Director of Investigation to participate in any enquiry under s. 10 or s. 37 and/or to have carriage of proceedings and/or to make any provisions of the nature contained in the Regulations. This contention is without substance. The Director is appointed under s. 8. The Commission is empowered to regulate its procedure as said more than one. Under s. 66(2)(d) it is given the authority to make regulations regarding the duties and function of the Registrar and the Director. Regulation 25 provides general duties of the Director and other Regulations like 74 (1) and 84 refer to his other duties. The Director is one of the senior and trusted member of the staff of the Commission. The Central Government makes the appointment of the Director in consultation with the Commissions. The Director directly assists the Commission in the discharge of its functions and enables it to efficiently exercise its powers. The fact that the Director investigates and makes a report does not disqualify him from discharging other duties contemplated under the Regulations. His work does not terminate with the report after investigation. The enquiry under s. 37(1) is before the Commission and in that enquiry the Director is assigned a different role. Since the Director collects the material or evidence during the investigation, he is the proper person to participate in the enquiry to enable the Commission to investigate into the matter.

91. It was next urged by Mr. Divan that there is one composite enquiry under ss. 10 and 39. The Commission has acted on the report in order to satisfy itself and, as such, the petitioners should know the material which has led to the Commission's satisfaction. The report has become a part of the record since the Commission has applied its mind to it. This contention must be rejected. The two enquiries have different characteristics, different domains to serve, different functions to discharge and different targets to achieve. We have scrutinized the nature and purpose of the report of the Director of Investigation in the light of various contentions. This confidential report is made use of by the Commission for a limited purpose. The report does not come on record nor does it become a part of the record. Therefore, it cannot affect or influence the mind of the Commission. The words "be brought on record" in regln. 21 indicate that the report does not form a part of the record and can be brought on record. Mr. Divan referred to the case of *Union of India v. Anglo Afghan Agencies*. AIR 1968 SC 718. In that case. Under the Export Promotion Scheme for woollen textile as extended to exports to Afghanistan, the exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods, and it was represented that the exporters will be entitled to import raw materials of the total amount equal to 100 per cent. of the f.o.b. value of the exports. Machinery for the scrutiny of the application and the issue of import entitlement was provided by clause 9 of the Scheme, and the Textile Commissioner was invested

with the authority to determine whether in any given case the declared value of the goods exported was higher than the real value of the goods and to assess the correct value of the goods exported and to issue import certificates on the basis of such assessed value. In that case, the Textile Commissioner acted on a report of the Committee appointed by him, and before that Committee the respondents had no opportunity to present their case. He collected evidence ex parte and did not disclose it to the respondents and without giving an opportunity to them to represent their case reduced the import certificate. In dealing with a representation made by the respondents, the Government of India also declined either to make available the evidence on which the Textile Commissioner had acted or give a hearing to the respondents. The court was of the view that the Textile Commissioner and the Union of India did not purport to act in exercise of the power under clause 10 of the Scheme. The order was sought to be supported on the plea that the subjective satisfaction of the Textile Commissioner was determinative of the extent of the import certificate which may be granted to the respondents. That case shows that the evidence collected ex parte was not disclosed to the respondents and without giving an opportunity to them, a decision was taken to their prejudice. That case is of no assistance. In that case what was called into question was the ultimate decision resulting in prejudice by non-disclosure of the report relied upon by the Textile Commissioner. In our cases so far only preliminary investigations have been conducted and no more.

92. Mr. Ashok Desai, the learned counsel appearing for 11th respondent in *Crompton Greaves*" petition, submitted that having regard to the judgments of the Commission in *A.I.M. Transport Congress v. Goodyear India Ltd.* [1976] 46 Comp Cas 315, *In re Singer-TVS Ltd.* [1976] 46 Comp Cas 183 and *In re Raymond Woollen Mills* [1976] 46 Comp Cas 395, the Commission has disabled itself from giving particulars and has thereby committed a jurisdictional error. In the matter of *singer-TVS Ltd.*"s case [1976] 46 Comp Cas 183, the Commission has taken the view that regln. 74 provides for delivery of further and better particulars when parties apply for directions after the pleadings are closed or deemed to be closed. Where the respondents have not even filed their replies, the stage under regln, 74 for particulars has not arrived. Regulation 15 which provides that in respect of any matter in which no provision has been made in the Regulation, the provisions of the C.P.C. shall apply mutatis mutandis to the proceedings before the Commission. The Regulation is not applicable because regln. 74 makes an express provision for particulars. The regulation provides that facts constituting the restrictive trade practices should be stated in respect of enquiries under s. 10(a)(i), (ii) and (iii). The analogy may be extended to a notice under s. 10(a)(iv) and the respondents would be entitled to the facts constituting the restrictive trade practices but not to instances and the evidence of the alleged restrictive trade practices. In *A.I.M. Transport Congress v. Goodyear India Ltd.* [1976] 46 Comp Cas 315, the Commission has reiterated its view on the lines in *Singer-TVS Ltd.* [1976] 46 Comp Cas 183. In the matter of

Raymond Woollen Mills Ltd." s case [1976] 46 Comp Cas 395, the Commission has confirmed its earlier view that the stage of further and better particulars is after the pleadings are closed and on the hearing of an application for directions. The view taken by the Commission is proper, and in following the same view in the present petitions, namely, the petitions of Raymond Woollen Mills Ltd., Crompton Greaves Ltd. and Philips India Ltd., the Commission has correctly interpreted its regulations.

93. By placing reliance on the decision of the Delhi High Court reported in Premier Tyres Ltd. v. MRTP Commission [1976] 46 Comp Cas 297 it was urged that an enquiry into restrictive trade practices by the Commission is required by law to be on specific charges resulting in a binding order by judicial process. That decision shows that once the notice is issued under s. 37, the substance of the complaint on which the notice is issued has to be communicated to the respondent. This was made clear by the last words of regln. 7 (of 1970) which requires that the notice shall state that the Commission proposes to hold an enquiry into the practice. The practice is the own which is complained of as being restrictive in the complaint and in the notice, therefore, the complained of practice will necessarily have to be set out. A notice which does not set out the practice will be unintelligible. The learned judges observed that the notice necessarily conveys to the respondents the allegations of the restrictive trade practice or practices made against them. It is only then that the respondents can file a statement of case under regln. 16 (of 1970) to which an answer may be filed by the Registrar under regln. 18 (of 1970). Now, the present regln. 58, 67 and 68 are substantially the same as the old reglns. 7, 16 and 18. The questions as to whether a given notice conveys to the respondents the allegations of restrictive trade practices made against them would depend upon the notice and facts and circumstances of each case. The general observations must be confined to the fact of that case.

94. It was next urged that the proceedings before the Commission are by judicial mode, inasmuch as the Commission frames issues, and, therefore, an order under s. 37 is of binding nature having far-reaching consequences. In the proceedings before the Commission, features of the court are assimilated. It was also urged that the allegation of misconduct or economic misconduct. For allegation of improper conduct, particulars must be given and even if the party does not ask for, the your can direct. There is no merit in these contentions in view of the earlier discussion.

95. Turning to the first contention that the Commission has no jurisdiction to investigate into the petitioner's status as a monopolistic undertaking, Mr. Parekh submitted that it is not the function of the Commission to do so. Mr. Setalvad, the learned counsel appearing for Philips India Ltd., in Miscellaneous Petition No. 628 of 1975 (since reported in [1979] 49 Comp Cas 757), reinforced the contention with reference to Chap. IV of the MRTP Act and submitted that it is a complete code in itself in which the role of the Commission is defined, if the

Central Government. He pointed out this provisions of s. 21 (3) (b) whereby the Central Government refers an application for proposed for propped expansion for an enquiry and report to the Commission. He also referred to s. 22 (3) (b) whereby an application to establish a new undertaking is referable by the Central Government to the Commission for enquiry and report. Likewise, the matter of scheme of merger of amalgamation or proposals to acquire by purchase, take over, referred to in sub-ss. (2) and (4) respectively of s. 23, can be referred to the Commission under sub-s.(6) for an inquiry and report. Mr. Setalvad contended that s. 37(4) is really an adjust to s. 31 to assist the Central Government but not to usurp the power of the Central Government. The commission is going out of its way in the present case when the inquiry is sou motu under s. 10(a)(iv). From the inception, such an inquiry cannot be made, nor can it be said that it has coincidentally come to light. As against this, Mr. Andhyarujina argued that the inquiry under s. 37(4) is an incidental power. The power to inquire into the monopolistic status is there by implication, and if Mr. Parekh's argument is accepted, the power under s. 37(4) would be sterile. The non-obstante clause is wisely put by Parliament. This sub-section gives jurisdiction to the Commissions to make a finding in respect of any monopolistic trade practice. The jurisdiction comes during the course of the inquiry under s. 37(4) and is to related to s. 10(b). Learned counsel also pointed out that there is on other section giving power to the Central Government to investigate the statues. There is not inquiry under s. 26 One has to register oneself voluntarily. Since the Commission is utilising its power under s. 37(4), it has given notice of its intention. Now, s. 31 relates to investigation by the Commission of monopolistic trade practices. Sub-section (1) of that section provides that where it appears to the central Government that one more monopolistic undertakings are indulging in any monopolistic trade practice, or that monopolistic trade practices prevail in respect of any good s or services, that Government may refer the matter to the Commission for an inquiry and the Commission shall, after such hearing as it thinks fit, report to the Central Government its findings thereon. Section 37 relates to investigation into restrictive trade practices by the commission. Sub-section (4) of that section is in the following words :

"Notwithstanding anything contained in this Act, if the commission, during the cause of an inquiry under sub-section (1), finds that a monopolistic undertaking is indulging in restrictive trade practices, it may, after passing such orders under sub-section (1) or sub-section (2) with respect to the restrictive trade practices as it may consider necessary, submit the case along with its findings thereon to the Central Government with Regard to any monopolistic trade practice for such action as that Government may take u/s 31."

96. The scheme of the MRTP Act is that the Commission function as an advisory body as regards monopolistic trade practices and even as regards matters referred to it under ss. 21, 22 and 23 as pointed out by Mr. Setalvad. It may inquire into monopolistic trade practice on its own initiative under s. 37(1) without reference made to it by the Central Government. Likewise, under s.

37(1) it can act on its own. It has to report its findings to the Central Government who is to take action under s. 31. Although s. 37 is primarily meant for investigation into restrictive trade practices, is nevertheless the Commission is empowered during the course of the enquiry to take notice of a monopolistic undertaking indulging in restrictive trade practices. This course of action is independent of the others modes contemplated under s. 10(b) and s. 37(1). Mr. Andhyarujina's submission carries meet that if during the course of the enquiry into restrictive trade practices, the Commission is to find that the monopolistic undertaking is indulging in restrictive trade practices, it implies that the status of the undertaking as a monopolistic undertaking has got to be determined beforehand. This can be done by giving intimation in the notice of enquiry under s. 37(1) so that the party has sufficient notice thirteen enquiry into its status can also be made during the course of the same enquiry and the party is not taken by surprise.

97. The impugned notice dated 6th December, 1974, in the case of Raymonds alleges that the petitioner is a monopolistic undertaking. Having regard to the provisions of s. 37(4), there is no bar in inquiring into the monopolistic status of as undertaking which is necessary for the Commission in order to give its finding. Such interpretation will make the subsection effective and workable. It is absolutely necessary for the Commission to determine the status when it has tract under this sub-section. The Commission is not usurping the power of the Central Government as forcefully urged by Mr. Setalvad. Another object of this sub-section is to reduce the multiplicity of proceedings, for what can be found in the same enquiry need not be done again by initiating another enquiry. The Commission has also framed regln. 37 (2) and applied Chap. IX of the Regulations to properly and efficiently function under this sub-section. The mere fact that the petitioner (Raymond Woollen Mills Ltd.) has registered itself under s. 26(1) of the MRTP Act the Central Government has issued a certificate of registration, cannot freeze the application of sub-s. (4) of s. 37. Such a registration is irrelevant in this connection.

98. In support of his submission, Mr. Andhyarujina referred top Commissioner of Income Tax, Delhi Vs. S. Teja Singh, Commissioner of Income Tax, Delhi Vs. S. Teja Singh, , which refers to the following passages from Maxwell on the Interpretation of Statutes, at page 356 (see also p. 415 of 35 ITR) :

""A statute so designed" observed Lord Dunedin in *Whiteney v. Commissioners of Inland Revenue* [1925] 10 TC 88, "to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable".

99. An express grant of statuary power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. (See [1969] 71 ITR 815; AIR 1969 SC 430 - *ITO v. Mohammed Kunhi*). Another well established rule of consternation that a power to do something essential for the proper and effectual performance of the work which the statute has in

contemplation was quoted from Craies on Statute Law, 7th edn., page 111. (See also Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., This rule of construction supports the opinion that the Commission has power to inquire into the status of the petitioners as a monopolistic undertaking and the impugned notice in this regard is valid and proper.

100. Much argument was focussed by Mr. Parekh on the point that the impugned notice of enquiry is vague and devoid of requisite facts relating to the restrictive trade practices alleged against the petitioner. In connection with the first restrictive trade practice, complaint was made that it does not say when the prices were increased, how many times the prices were increased, what are the quanta of increases on those occasion and what is the benefit given to the distributors. It does not show facts which constitute the alleged abnormality in the increase in prices. The Commissions has expressed the view that there is not vagueness about the words "abnormally" and "inter alia" used in the first restrictive trade practice. This restrictive trade practice makes amply clear that increase in the price of files by manipulating and frequently revising them in a manner unrelated to the increase, if any, in the cost of production, is an abnormal increase. The word "etc.", according to the commission, suggests that the price rise is unrelated not only to the costs of management and other charges. Similarly, the word "inter alia" has been used to show that there may be other motives in increasing the prices than merely to benefit the distributors. Manipulation of prices may be carried out by various methods. The allegation that the price list is frequently revised is said to be unrelated to the cost of production. The allegation of abnormal increase in the prices by Manipulation clearly indicates the nature of the allegation. The frequent revision of piece list is also alleged. Both of these are intended for the benefit of the distributors among others resulting in imposing unjustified costs or restriction on the consumers. The absence of the time factor from these allegation as to when the abnormal increase in the prices was effected or the number of times it was effected, the frequency of the increase in prices, would depend upon the manipulation of prices and the frequency of manipulation and the extent of manipulation. How frequently the price list is revised would be a matter of evidence, and all that is said is that such frequent revision of price list cannot be related to the cost of production. What is sought to be suggested is that the cost of production had not gone up so frequently which called for the frequent revision of the price list on the plant of the petitioner.

101. The second restricted trade practice is a clear allegation of practicing discrimination and the files in which discrimination is practiced. The various fields in which discrimination is practiced are also mentioned. It indicates the persons between whom the discrimination is practiced. The argument that when and where the discrimination is indulged in is not mentioned, the names of the distributors who are preferred and discriminated against are not furnished, the areas or territories which are preferred and the areas or territories which are

discriminated are not disclosed. And therefore, the petitioner is not able to file its reply is without merit. The allegations as regards the nature of discrimination and the parties between whom the discrimination is made, are sufficient to enable the petitioner to meet the case by denial or justification. It is also not plausible to accept the argument that the allegation of discrimination by issuing credit notes is totally unintelligible to any commercial person as credit notes are generally issued for goods returned or for defective goods and for some monetary adjustments in accounts. It may be that the discrimination is practiced in issuing credit notes for the goods returned or for defective goods or for some monetary adjustments in accounts as between distributors of certain areas and distributors of other areas. The Commission has examined the grievance of the petitioner and found it without substance. It may be noted that the Commission has not closed the door together for furnishing full and better particulars to the petitioner. All that it has held is that the allegations of restrictive trade practices contain the necessary constituent facts which are required to be mentioned under regln. 58 and, therefore, there was no merit in the application. The Commission has also held that the stage for full and better particulars is after the pleadings are closed and not before the filing of reply to the notice. After the petitioner has filed its reply with the list of documents on which it relies in support of its case and after they give inspection to the Director of Investigation in the present case and after the Director of Investigation has filed his rejoinder, at the stage of application for directions, the petitioner will have an opportunity to ask for full and better particulars if a case can be made out.

102. Mr. Andhyarujina pointed out that the impugned notice of enquiry is not bare bones as urged by Mr. Parekh. It mentions the nature of the alleged restrictive trade practices indulged in by the petitioner. In connection with the complaint that the notice does not mention the period, he submitted that the period itself was the matter of investigation. That would localise the enquiry. The purpose of the enquiry is to know more than what is known. In matters of restrictive trade practices, the object with which the restrictive trade practice is done is irrelevant because the Commission is concerned with the effect of the restrictive trade practice. As regards the charge of manipulation of prices, the petitioner can deny the same and say that it is related to price and pleaded gateway under s. 38 (1)(b), (e) and (f) or the balancing feature contained in that section can be relied upon. Practicing discrimination is a well-known method and how it is done is mentioned in item (ii) of the notice. He submitted that this charge is not vague. Whatever be the burden on his clients to prove "issuing credit notes" mentioned in item (ii) will be discharged at the proper time. In so far as item (iii) is concerned, nothing was pointed out about its vagueness or if it lacks in any particular. This item was free from any attack. With regard to item (iv), the restrictive trade practice referred to therein of favouring certain distributors by giving unjustifiably more supplies to them on the eve of price revision so as to enable them to earn more profit by selling subsequently such stocks at (revised) higher prices, was sufficiently clear. Mr. Andhyarujina

submitted that this alleged restrictive trade practice was a shocking example of discrimination and if true, the petitioners would not find gate-way under s. 38. He also contended that the information on which this allegation is formulated may be confidential and its disclosure may put the person to risk or harassment at the hands of the petitioner. In connection with item (v) giving discounts and bonus calculated on the basis of turnover and issuing credit notes or giving other concessions or benefits in connection with, or by reason of, dealings, Mr. Andhyarujina pointed out that this restrictive trade practice was hit by s. 33(1) (e) of the MRTP Act, which refers to agreement to grant or allow concessions or benefits including allowances, discounts, rebates or credit in connection with, or by reason of dealings. But nevertheless if the petitioners have been doing so, they may choose the gate-way under s. 38(b). The learned counsel by reference to the gate-ways demonstrated that the allegations of restrictive trade practices mentioned in items (i) to (v) are not vague or unintelligible as to present difficulty in making reply to the show cause notice as sought to be vigorously urged on behalf of the petitioner. I think that Mr. Andhyarujina is quite right in his submissions. In my opinion, the notice is not vague at all and contains the material allegations. I am convinced that the petitioners are unnecessarily finding fault with the impugned notice of enquiry by seeking to challenged it on grounds of vagueness, want of particulars, information, etc. with the ulterior motive of delaying the enquiry.

103. To sum up on the point of report, no illegality is committed by the Commission in not furnishing the copy of the report to the petitioner. The stage for supply a copy of the report may never arise because it is up to the Commission to decide whether the report is to be brought on record or not. If it chooses not to bring in record the report, the report cannot be made available. It is only when the report is brought on record as provided in regln. 21 or if the Commission were to made use of it during the enquiry to the prejudice of the petitioner without giving an opportunity to the petitioner to correct or contradict it, that the petitioner would have a ground for making a grievance. In not furnishing a copy of the report at this stage, the Commission is not committing any illegality because it is following its own procedure which treats the report as confidential. The procedure also shows that either the whole report may be brought on record or only a part of it. Therefore, in view of the express provisions contained in the Regulations, no illegality is committed by the Commissions in not making a copy of the report available.

104. The Commission will ask itself whether the report is to be brought on record or not. I cannot accelerate that process. The report is treated as confidential. In that sense, it cannot be acted upon or taken into consideration by the Commission without disclosing it to the party concerned. This is what the rules of natural justice to which we are dedicated require. The Regulations say so. The Commission's counsel has argued so. On oath the Commission's officer has said so. In para. 21 of the affidavit in reply, Shri R. D. Saxena, Director of Investigation, avers :

"..... unless it (report) is brought on record for the enquiry under Regulation 21 in which case the Commission will communicate the relevant part of the Report and give the petitioner an opportunity to rebate the material"

105. Therefore, the petitioners' contention has not substance whatsoever. Rules of natural justice in these circumstances cannot enter the arena to accelerate the disclosure of the report because the petitioner wants it. There is no compulsion to bring the report on record. If I were to compel such disclosure, a serious impediment might be placed upon the most difficult and delicate task of collecting information and material by the officers of the Commission.

106. Mr. Parekh contended that a writ petition at an interlocutory stage - a stage earlier than the stage of appeal provided for under s. 55 of the Act, is maintainable, and in support of this contention he referred to the decisions in (1) K.S. Joneja Vs. P.M. Das Gupta and Another, (2) Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious Endowments, Madras and Others, (3) Shantaram D. Salvi Vs. M.M. Chudasama and Others, and (4) The State of U.P. and Another Vs. Duli Chand Kashi Prasad, In the Calcutta case, a writ in the nature of prohibition prohibiting the Government from proceeding with the departmental enquiry without specifying the particular documents which were going to be produced at the hearing and without giving inspection thereof to the petitioner beforehand was passed under art. 226 of the Constitutions. Here the court was concerned with the Bengal Civil Service (Classification, Control and Appeal) Rules, and under r. 55 though there is no question of demanding production or inspection of documents, the principles of natural justice do cast a duty upon the Government to specify and produce for inspection the documents asked for or such of them as are available, in order to enable an officer to defend himself properly against the charges levelled against him in the departmental enquiry. In the Madras case, it was held that a writ of prohibition lies to prevent an inferior tribunal from exceeding its jurisdiction or even from assuming a jurisdiction which does not vest in it by law. It also lies if a provision of a statute is contravened by the tribunal or even if any principles of law are contravened. In deciding the question whether a writ of prohibition should issue or not, the existence of an alternative remedy is an irrelevant consideration when the complaint is that an inferior tribunal is exceeding its jurisdiction or is assuming a jurisdiction not vested in it by law. If the tribunal is permitted to exercise that jurisdiction which is objected to, if it exercises it wrongly, the mischief would be done before the alternative remedy is availed of. It is unnecessary to insist upon a party complaining that he should first suffer and submit himself to the jurisdiction which is being wrongly exercised or is wrongly exceeded and then take advantage of the alternative remedy. In the case decided by this court in Shantaram D. Salvi Vs. M.M. Chudasama and Others, it was observed that the purpose of issuing a writ of prohibition is to prevent a person or a body of persons having legal authority to determine questions affecting the rights of a subject judicially from acting in excess of their legal authority and the writ goes to *ex debito justitiae*. It is

preventive in its character and not remedial and the court should not be chary of exercising it. These observations were made in connection with the holding of a departmental enquiry. In the case, this court held that the holding of a departmental enquiry by a Superintendent of Police under r. 3 of the Rules in operation under the Bombay Police Act, 1951, is a condition precedent, a fact which must exist before the Commissioner of Police can assume jurisdiction or authority for the purpose of passing the final order of dismissal under r. 3 (e) of the Rules against a Deputy Inspector of Police. Where, therefore, a preliminary enquiry into the alleged misconduct of a Deputy Inspector of Police was conducted by an Inspector of Police, it was held that as the preliminary enquiry formed part of the proceedings to be held by the Superintendent of Police himself under r. 3, the holding of the proceedings by a unauthorised person did not amount to a proceeding under r. 3 (b) and the Commissioner of Police had no power or jurisdiction to act under any provision of the Bombay Police Act, 1951, or the Rules which authorise him to inflow a major punishment on an officer only after a departmental enquiry as envisaged under the Rules is held. In the Allahabad case, it is observed that a writ in the nature of prohibition issues to restrain a quasi-judicial authority from exceeding the bounds of its jurisdiction. It may be issued at the threshold of the enquiry before it or soon after it has given a decision on the issue of its jurisdiction. It issues at the threshold of the enquiry before it if there is patent want of jurisdiction. If the jurisdiction depends on the existence of certain facts, it is generally proper that the court should not interfere with the enquiry until it has decided the issue of jurisdiction, for then full facts relation to the jurisdiction would be before the court. It may be that if there is prima facie no evidence to give it jurisdiction, the court may in a suitable case interfere at the threshold of the enquiry. The facts of those cases are not similar to our cases. By reason of the opinion already expressed by me that the impugned notice of enquiry is valid and that the petitioner is not entitled to a copy of the report of the Director of Investigation and that there is no breach of the principles of natural justice, these decisions are of no assistance to the petitioner. Moreover, the question of maintainability of these writ petitions is not in issue.

107. Mr. Divan submitted that although there may be a right of appeal under s. 55 of the MRTTP Act, nevertheless a writ of prohibition could be issued. He placed reliance on a passage at page 506 in the case of *King v. North* [1927] 1 KB 491. In that case, the question that arose for consideration was about the legal position against a person against whom an order for payment had been made in a judicial proceeding where the person had no opportunity of being heard before the order was made. Atkin L.J., in his judgment at page 506, observed that the fact of there being a remedy by way of appeal is no answer to a writ of prohibition, where the want of jurisdiction complained of is based upon the breach of a fundamental principle of justice. In the present case, there is no breach of a fundamental principle of justice so far. This decision, therefore, cannot be of any assistance to the petitioners.

108. Mr. Divan also addressed me on "prohibition quousque". Such an order of prohibition is granted until the inferior court alters its decisions. He contended that the order of the Commission in denying the particulars and failing to give a copy of the report is perverse, and until this is done, the Commission should be prohibited from proceeding with the enquiry. He cited English and Indian decisions to bring home his view point. I need not dwell upon these arguments and cases as the petitioners have failed to make out a case for grant of any relief and, therefore, writs of certiorari, prohibition or prohibition quousque, in my humble view are unthinkable.

109. On the question of relief in the exercise of the discretionary power, Mr. Andhyarujina submitted that the present petition is nothing but delaying tactics. The MRTTP Act does not contemplate the kind of proceedings adopted by the petitioner to hold up the enquiry before the Commission. The Act provides for appeal under s. 55 to the Supreme Court on grounds specified in s. 100 of the CPC. It is well known that the High Court has very wide power under art. 226 of the Constitution. These powers confer a discretion of a most wide and extensive nature on the High Courts. But the very vastness of the powers imposes on it responsibility to use them with circumspection. In the present case, the controversy affects the interest of the public in general. Delay in starting the enquiry would delay curbing the alleged restrictive trade practice which are not conducive to the common good. These alleged trade practices which are sought to be discontinued and its repetition prevented permanently concerns the hearths and homes of thousands of people who buy or many who cannot deal in goods manufactured and distributed by the petitioners. Therefore, when the interest is of the public, the court would be slow in exercising its discretionary power in cases of the present type when the enquiry proceedings are sought to be arrested at the threshold by invoking the extraordinary jurisdiction of the court under art. 226 of the Constitution. More over, the MRTTP Act makes provision for appeal and if the petitioners were to be prejudiced at any time by reason of want of particulars or by the non-supply of the report or for any other reason, they would have sufficient opportunity to agitate the same in appeal to the highest forum of the land. Although it is true that merely because there is a provision for appeal, the jurisdiction of the High Court is not taken away in entertaining a writ under art. 226 of the Constitution, nevertheless the fact that the statute contains a self-contained provision for remedy must be given due consideration. I am of the view that the present petition has been filed with a view to gain time so as to avoid facing the enquiry and in the meantime to continue the alleged restrictive trade practices.

110. On behalf of the respondents, it was submitted that in the present enquiry, no prejudice is caused to the petitioners. Today they are in the same happy position as at any time. There can be no prejudice until a "cease and desist" order is made under s. 37. Mr. Andhyarujina further submitted that the Commission operated in future and not for the past, however obnoxious the conduct. Even if there is ample remedy by way of appeal to the Supreme Court.

Mr. Andhyarujina pointed out that in Raymond's petition in para. 23 it is merely averred that they would be gravely prejudiced unless they know what all the allegations are in the notice. It is also averred that grave and irreparable harm would be caused unless further enquiry is stayed. (The cases of Crompton Greaves and Philips India Ltd. will be considered separately on this point - see [1979] 49 Comp Cas 757). Mr. Parekh contended that the prejudice was there per se. Mr. Divan contended that the petitioners would be prejudiced, inasmuch as they would be at the mercy of the Commission for further and better particulars and for amendment of the pleadings. The Commission might not allow the application. The petitioners would have adverse publicity and they will have to bear the cost of litigation, harassment and dig out old records in order to face the enquiry. In this connection, Mr. Andhyarujina contended that, as regards publicity, there is no direct charge of economic crookedness, misfeasance or malfeasance. There are no allegations of bribery, misappropriation, smuggling, etc., against the petitioners. The alleged trade practices are in public interest. They can justify them as actually beneficial to public interest. In my view, there is considerable merit and force in the arguments of Mr. Andhyarujina. The petitioners have failed to show that they have been really prejudiced on account of the alleged non-observance of the principles of natural justice. Even what is suggested as causing prejudice is worthless. As regards the suggestion that the petitioners would be at the mercy of the Commission, it can be said that every one who has occasion to appear before judicial and quasi-judicial tribunals and courts as well is at their mercy. The fear expressed that the Commission might not grant applications for further and better particulars or for amendment of the pleadings is unfounded and does not deserve to be considered. The Commission is a high powered body composed of men of ability, integrity and standing, who have adequate knowledge or experience or have capacity to deal with problems, inter alia, relating to law. The Chairman is a person who has been or is qualified to be a judge of the Supreme Court or of a High Court. The Commission will exercise its discretion judiciously in these matters and not capriciously. As regards another suggestion that the petitioners would be oppressed by harassment, trouble and expense to which they would be put by having to undergo the trouble and expense to which they be put by having to undergo the trouble and expense to which they would be put by having to undergo the trouble of making a reply to a defective notice of enquiry and the ordeal of an enquiry, I cannot agree with the same. An enquiry into the restrictive trade practices or the determination of the status of the petitioner as a monopolistic undertaking does not involve any more or even as much mental anxiety, physical trouble or expense for the subject than does a prosecution for a criminal offence. The present enquiry is for preventing further gratification from the alleged restrictive trade practices. At this stage, the petitioner is not in the position of an accused. It is upon conclusion of the enquiry that the restrictive trade practice or the Commission may modify the agreements. In the intervention period, the petitioner happily continues the trade practices. No embargo can be placed on the party pending the enquiry. The party is not

accountable for the gains and profits yielding from such trade practices. It is the public interest that is at stake. If the enquiry is delayed or postponed, it is the public interest that suffers and not that of the petitioner on whom no kind of limitations, restrictions and conditions can be imposed. In such a case as this, in circumstances like in the present case, I cannot think of granting relief under art. 226 of the Constitution of India.

111. In the result, the petition fails and is dismissed. Rule is discharged. The interim stay is vacated.

112. The petitioner to pay to respondents Nos. 1 and 2 costs fixed at Rs. 2,000. All the three petitions were heard together and the time consumed in the hearing excluding the judgment was about eighty hours. Hence, in each petition fixed costs of Rs. 2,000 are awarded.

113. The petitioners made an application for continuing the interim stay as they desire to go in appeal against this order. I have rejected the application observing as follows :

"Having regard to the nature of the enquiry u/s 37 of the MRTP Act, it is not in the interest of justice as well as in the interest of public to re-impose the injunction which has been vacated by my order dated 5th July, 1976."