
(2008) 09 OHC CK 0048
In the Orissa High Court

Sarat Kumar Kar		APPELLANT
	Vs	
State of Orissa and Another		RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 2, 3, 5
Constitution of India, 1950 — Article 105, 153, 154, 155, 156
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 107, 109
Prevention of Corruption Act, 1988 — Section 13, 19

Citation : (2008) 2 OLR 891

Hon'ble Judges : I.M. Quddusi, J;A.K. Parichha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—By means of this writ petition, the petitioner has questioned the jurisdiction of the State Government in appointing a Commission of Inquiry under the Commission of Inquiry Act, 1952 to enquire into the affairs of the Orissa Legislative Assembly and to quash the order dated 10.1.2007 passed by the Commission of Enquiry by which it has ordered that the point of jurisdiction raised by the petitioner shall be decided in its final, report.

The brief facts of the case are that the petitioner, namely, Sri Sarat Kumar Kar, who was a legislator for few terms, was elected as the Speaker of the 12th Assembly. During his tenure, some appointments in the Assembly Secretariat and purchase of computers were made. There were statutory rules for appointment of staff. As Speaker of the 12th Assembly, the petitioner appointed a Selection Committee as per rules which made the appointments.

2. The Hon'ble Speaker of the 13th Assembly being aware of the adverse media publicity and to get the image of the Assembly cleared of any media abuse, appointed a retired Judge of this Court as the Commission of Enquiry under the Commission of Inquiry Act, 1952 (hereinafter referred to as "the Act"). The

Speaker himself realized the same to be incorrect view as he was not one of the authorities to appoint the Commission. Therefore, he recommended to the State Government which ultimately appointed the Commission.

The Commission proceeded with the matter, recorded evidence etc. But the petitioner moved an application before the Commission challenging the authority of the State Government to appoint the Commission to enquire into the affairs of the Assembly. The petitioner argued that appointment of the Commission by the State Government was neither constitutional nor legal. Moreover, it is not desirable and honourable to set up such enquiry commission in Parliamentary democracy where the Assembly's proceedings under the capacity of Speaker reflects the honour, prestige and independence of the Legislature.

3. From the record, it appears that initially the Hon"ble Speaker in exercise of powers conferred by Section 3 read with Sub-section (1) of Section 5 of the Commission of Inquiry Act, 1952 (60 of 1952), issued notification appointing a Commission of Inquiry consisting of Justice Chira Ranjan Pal, Retired Judge of Orissa High Court to enquire into and report in respect of the matters mentioned therein within 3 months from the date of publication of this notification in the Orissa Gazette. After the aforesaid notification was issued, the learned Advocate General, Orissa gave his opinion on 18.8.2004 that the notification issued on 23rd July, 2004 by order of the Hon"ble Speaker appointing a Commission is not justified under the Constitution or the rules framed under the Constitution. This may at the most be information to the State Government to form an opinion u/s 3 of the Act. Thereafter, it appears that the Speaker of Orissa Legislative Assembly had brought to the notice of the State Government the issue of alleged corruption in purchase of computers and illegal appointments made during the 12th Assembly on which the State Government in exercise of the powers conferred by Section 3 read with Section 5 of the Commission of Inquiry Act appointed a Commission of Enquiry consisting of Justice Shri Chira Ranjan Pal, retired Judge of Orissa High Court with effect from 22.7.2004, i.e. with retrospective effect to enquire into and report in respect of the above mentioned three matters by notification dated 15.9.2004.

4. By he said notification was published in Orissa Gazette Extraordinary dated 15.9.2004 which is reproduced as under:

Parliamentary Affairs Department Notification

The 15th September, 2004.

S.R.O. No. 437/2004 - Whereas the Hon"ble Speaker, Orissa Legislative Assembly has brought to the notice of the Government the issues of alleged corruption in purchase of Computers and illegal appointments made in the Orissa Legislative Assembly during the 12th Assembly, which have been published in different dailies;

And whereas, after carefully considering the gravity of the allegations, the State

Government is of the opinion that these being definite matters of public importance should be enquired into by a Commission of Inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952);

Now, therefore, in exercise of the powers conferred by Section 3 read with Sub-section (1) of Section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952) the State Government do hereby appoint a Commission of Inquiry consisting of Justice Chira Ranjan Pal, retired Judge of Orissa High Court, with effect from the 22nd July 2004 to enquire into and report in respect of the following matters within 3 months from the date of publication of this notification in the Orissa Gazette, namely-

(i) The alleged violation of the Recruitment procedure and the illegal and unfair practice adopted in giving appointments and showing of favouritism and nepotism by misuse of official position.

(ii) Alleged corruption committed in purchase of computers for the Legislative Assembly.

(iii) The role, if any, of any authority/organization/individual in causing violation of the procedure in making the above alleged appointment and purchase; and

(iv) Any other matter connected with or incidental thereto as the Commission may consider appropriate including any suggestions in relation to the above matters.

Further the State Government to hereby direct that the provisions of Sub-sections (2), (3), (4) and (5) of the Section 5 of the said Act shall also apply to the Commission having regard to the matters of enquiry to be made and other circumstances of the case, the provisions should be made applicable to the Commission.

The Commission of Enquiry may also perform such other functions as are necessary in relation to the Enquiry.

The Headquarters of the Commission shall be at Bhubaneswar but Commission may hold enquiry in any other place as may be necessary for the purpose of Enquiry.

(No. 6178/PAD) By order of the Governor T.K. Pandey Commissioner-cum-Secretary to Government

5. Thereafter, notice was issued to the petitioner on 25.2.2005 to furnish his statement in the shape of counter supported by affidavits on the matters under reference as at the relevant point of time he was functioning as Speaker of 12th Orissa Legislative Assembly. The State Government thereafter in Parliamentary Affairs Department Notification No. 1090/PAD. Dated 31.1.2005 had also enhanced the scope of inquiry by adding "(ii-a) Alleged irregularities committed in installation of Attendance and Access Control System in the Orissa Legislative Assembly" to the terms of reference. Consequently, the Commission recorded

evidence etc. but in the mean time the petitioner raised objection in respect of the jurisdiction of the Commission by filing petition dated 8.1.2007. By order dated 10.1.2007, the Commission passed order to the effect that it would be expedient to deal with the issues raised on behalf of the petitioner at the time of preparing the report as all the evidence have been recorded and only arguments were to be heard to close the hearing.

6. The petitioner being aggrieved approached this Court by filing the present writ petition inter alia with the submission that in case the Commission will prepare its report, there will remain nothing to decide the issue of jurisdiction.

The petitioner appeared in person. He submitted that by virtue of appointing a Commission to enquire into the affairs of the State Legislative Assembly, the State Executive has tried to attempt to make the post of Speaker to be under the dictates of the State executive. The independence of the House and its Speaker is a paramount consideration in the role of democracy. Interference by the Executive is not permissible with the separation of powers as we have formed in our Constitution, impartiality of the House is one of the paramount considerations of the democracy. By this process, the Speaker of the House cannot be able to discharge his constitutional functions without fear and favour and as per his own conscience which will ultimately give a bad signal for future to come. He has further submitted that the reference as has been made to the Commission cannot be treated as a matter of public importance. The intention of the legislature is explicitly clear when they use the word "matter of public" importance in Section 3 of the Commission of Inquiry Act and the State Executive cannot be given unbridled power to use its wisdom to any matter putting it as matter of public importance. The Speaker is elected as the Chief Presiding Officer of the Legislature.

7. So he is a constitutional appointee, independent authority of a separate wing of the State. He is not accountable to the Government on the contrary the Government is accountable to the Legislature of which the Speaker is the master to regulate his constitutional functions including the Assembly Secretariat and its internal administration and its budgeted expenditure. So he enjoys unbridled power in his own domain and immunity, independence without any fear and pressure from any quarter except the constitutional mandate and sanction. He is not a government officer or departmental head or under the Chief Minister and Parliamentary Affairs Department to be subjugated to any interference or enquiry. Therefore, the State Government is not competent to set up a Commission to enquire into the affairs of the State Legislative Assembly. There is a recruitment rule for recruitment to Assembly Secretariat. The Speaker of the 12th Assembly only formed a selection Committee as per the rule. For any irregularity and doubt of aggrieved person, the Speaker is the appellate authority. Any aggrieved person can approach the Court directly. He has further submitted that the Commission of Enquiry Act provides u/s 3 to appoint a Commission but it is subject to the control as per List I or List III of the Seventh

Schedule to the Constitution. List II and List III do not give a power to the State Government with regard to the functioning of the State Legislative Assembly. Since there is no jurisdiction of the State Government to appoint the Commission, the appointment of the Commission is itself a nullity.

8. The learned Advocate General in his submission has made emphasis that the power when exercised according to Section 3(1) of the Act, the report unless laid before the Assembly is not available for any one. The matters relate to Assembly and in particular to Article 187, but in view of Section 3(1) of the Act which resulted in appointment of the Commission, whose report in view of Sub-section (4) of Section 3 of the Act requires it with a memorandum of action taken thereon shall be caused to be laid before the Legislature of the State within a period of six months after submission of the report makes it the property of the Assembly to be within its domain. The report however, is not open to public unless it is laid before the Assembly when it is the domain of the legislature, to debate and denounce not only the executive government and every one responsible for diluting the public appointment to the Assembly Secretariat.

9. It is only after that process which includes both the threshold and final determination giving direction by the legislature accepting the report, no judicial review would arise.

Learned Advocate General has placed reliance on the decision of *P. Janardhana Reddy Vs. State of A.P. and Others*, and submitted that there was an allegation that compensation for land acquired for house site for poor was paid at much higher rate, than similar lands at about same time, acquired for construction of the left bank Yeleru Left Canal and a letter was sent to the High Court and the said letter was treated as a petition and upon hearing, the High Court directed for issuance of notice and stayed the payment of balance compensation and it was expressed that a judge of the High Court to be appointed.

10. The State Government by that time had appointed the Principal Secretary, Social Welfare Department, as Enquiry Officer. While the matter stood thus, the same came up for discussion before the Legislative Assembly and the Hon'ble Chief Minister stated that he had no objection if a sitting Judge is appointed as a Commission for conducting enquiry and such appointment was made. But at a subsequent stage, this appointment itself was challenged on the ground that the State had not formed its opinion and the High Court quashed the appointment on the ground that the State had not formed an opinion as required u/s 3 of the Act before issuance of notification and ultimately the matter had gone to Supreme Court and the Supreme Court explained that the appointment is meant primarily for the purpose of information of the Government; the Commission does not adjudicate on any matter, its report has no value per-se, excepting giving advice and providing guidance to the Government.

11. Further the learned Advocate General has placed reliance on *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , *P.V. Jagannath Rao and*

Others Vs. State of Orissa and Others, ; Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others, , State of Madhya Pradesh Vs. Shri Arjun Singh and others, , Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, , Parkash Singh Badal and Another Vs. State of Punjab and Others, , Lalu Prasad @ Lalu Prasad Yadav Vs. State of Bihar through CBI (AHD), Patna, , Raja Ram Pal Vs. The Hon''ble Speaker, Lok Sabha and Others, and P.V. Narsimha Rao Vs. State (CBI/SPE), . Let us first peruse the decisions cited by the learned Advocate General.

In Ram Krishna Dalmia v. Justice S.R. Tendoikar (supra), the apex Court held as under:

xx xx xx quite conceivably, the conduct of an individual person or company or a group of individual person or companies may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry, xx xx.

In P.V. Jagannath Rao and Others Vs. State of Orissa and Others, , the Hon''ble Apex Court held as under:

xx xx xx The purpose of enquiry is stated in the preamble to the notification which states that "the matters aforesaid regarding the aforesaid persons should be enquired into through a Commission of Inquiry so that facts may be found which along will facilitate rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order in future.

In Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others, while considering the purpose of appointment of Commission of Inquiry the apex Court held as under:

A Commission is obviously appointed by the appropriate Government for the information of its mind in order for it to decide as to the course to be action to be followed. It is, therefore, a fact finding body and is not required to adjudicate upon the rights of the parties has no adjudicatory functions.

12. In State of Madhya Pradesh Vs. Shri Arjun Singh and others, , a Commission was appointed by the State Government on February 24, 1989. During the pendency of the enquiry, the State Government by a fresh notification dated March 29, 1990 enlarged the terms of the original reference. Shri Arjun Singh filed writ petition challenging the notification dated March 29, 1990. High Court rejected all the grounds oh which the notification was challenged but quashed the notification holding that it suffered from non-application of mind and invalid exercise of powers u/s 3 of the act.

13. The State Government filed appeal before the Supreme Court. The Supreme Court observing that so far as the terms of reference contained in Clauses (A) and (B) of the second reference were concerned, the same were already covered in the terms of the original reference held that the High Court rightly quashed

Clause (C) of the second reference as there was no relevant material before the State Government for enlarging the scope of the existing enquiry under the original reference. However, the Court held that quashing of the reference does not preclude the State Government from appointing any commission of enquiry according to law after applying its mind to any fresh or further material placed before it.

14. In the case of Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, a writ petition styled as public interest litigation, Was filed before the Supreme Court with the prayer to issue an appropriate writ in the nature of mandamus directing the Union of India to take appropriate action to prosecute respondents 2 to 5 therein under the provisions of the Prevention of Corruption Act, 1988 for acquiring amassed assets more than the known source of their income by misusing their power and authority. The Court in the aforesaid case held as follows:

Sri Mulayam Singh Yadav, is a senior politician and holding a very public post of Chief Minister in a very big state in India and the allegations made by the petitioner against him have cast a cloud on his integrity. Therefore, in his own interest, it is of utmost importance that the truth of these allegations is determined by a competent forum. Such a course would subserve public interest and public morality because the Chief Minister of a State should not function under a cloud and that it would also be in the interest of Respondent 2 and the members of his family to have their honour vindicated by establishing that the allegations are not true. In our view, these directions would subserve public interest.

15. The ultimate test, in our view, therefore, it is whether the allegations have any substance. An enquiry should not be shut out at the threshold because a political opponent of a person with political differences arises an allegation of commission of offence. Therefore, we mould the prayer in the writ petition and direct CBI to enquire into alleged acquisition of wealth by respondents 2-5 and find out as whether the allegations made by the petitioner in regard to disproportionate assets to the known source of income of respondent 2-5 is correct or not and submit a report to the Union of India and on receipt of such report, the Union of India may take further steps depending upon the outcome of the preliminary enquiry into the assets of respondents 2-5.

In Parkash Singh Badal and Another Vs. State of Punjab and Others, , relied on by the learned Advocate General, the challenge was to the judgment of the Punjab and Haryana High Court dismissing the petition filed by Parkash Singh Badal, the appellant, who at the relevant point of time was the Chief Minister of the State of Punjab questioning the validity of proceedings initiated under the Prevention of Corruption Act, 1988 and/or the Indian Penal Code. The stand of the appellant in each case was that the proceedings were initiated on the basis of complaints which were lodged mala fide and as an act of political vendetta. It was stated that the allegations were vague, did not show the commission of any

offence. The apex Court dismissed the appeals holding that the challenge was without substance.

16. In *Lalu Prasad @ Lalu Prasad Yadav Vs. State of Bihar through CBI (AHD), Patna*, , the validity of the sanction to prosecute the appellants for offence punishable u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 was challenged. In that case sanction had been given by the Governor to prosecute Lalu Prasad Yadav. Prosecution did not obtain sanction separately so far as Smt. Rabri Devi was concerned as she was only a house wife and not a public servant during the relevant period. In the sanction accorded in respect of the appellant Lalu Prasad Yadav, it had been expressly mentioned that the acts of Smt. Rabri Devi amounted to aiding and abetting the commission of offence u/s 13(1)(e) by her husband Lalu Prasad Yadav and she was thus liable to be prosecuted for offence punishable under Sections 107 and 109 of the Indian Penal Code. The apex Court held as under:

Section 197 Cr.P.C. and Section 19 of the PC Act, 1988 operate in conceptually different field. In cases covered under the P.C. Act, 1988 in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 Cr.P.C., the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties. Position is not so in case of Section 19 of the PC Act, 1988. The reason is obvious. The sanctioned contemplated in Section 197 Cr.P.C. concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the P.C. Act, 1947 was materially imported into the new PC Act, 1947 was materially imported into the new PC Act, 1988 without any change in spite of the change made while enacting Section 197 Cr.P.C.

17. In *Raja Ram Pal Vs. The Hon"ble Speaker, Lok Sabha and Others*, , the interpretation of Article 105 of the Constitution of India was in issue. The question was whether in exercise of the powers, privileges and immunities as contained in Article 105 the Houses of Parliament were competent to expel their respective Members from membership of the House. If such a power exists, is it subject to judicial review and if so, the scope of such judicial review. The apex Court held that the power of expulsion is not contrary to democratic process. In paragraph 45, the apex Court held as under:

the dust has since settled even in England which jurisdiction since concedes the jurisdiction of the Court to decide all questions of privilege, except those concerning exclusive jurisdiction of the legislative chamber over its internal proceeding.

The Court examined the English authorities and a New Zealand case but came to consider it's earlier opinion in *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, which was again brought back to the Court in 1960 and observed.

No Court can go into those questions which are within the special Jurisdiction of the Legislature itself, which has the power to conduct its own business.

But apart from this, it had stated a third reason that:

It is yet premature to consider the question of procedure as the committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business.

18. In *P.V. Narsimha Rao Vs. State (CBI/SPE)*, , the question was whether by virtue of Article 105 of the Constitution a Member of Parliament can claim immunity from prosecution on a charge of bribery in a criminal Court and whether a Member of Parliament is a "public servant" falling within the purview of the Prevention of Corruption Act, 1988. But none of the above cases is of any help to the State as the contention raised in the writ petition is regarding jurisdiction of the State Government over the affairs of the Legislative Assembly in making appointment of the Commission under the Commission of Enquiry Act and this Court is not going into the question about the jurisdiction of the State Legislature here.

19. Learned Advocate General has submitted that the State Government has ample power to appoint a commission in case it desires to conduct an inquiry as to whether any offence has been committed or not, as in Entry I of List III which speaks as under:

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against law with respect to any of the matters specified in List I or List II excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the Civil Power.

Since the Commission of Inquiry has been appointed under the provisions of Section 3 read with Sub-section (1) of Section 5 of the Commission of Inquiry Act, perusal of the same is necessary. The same is reproduced hereinbelow:

20. Appointment of Commission-

(1) The appropriate Government may, if it is of opinion that it is necessary so to do, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within

such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter-

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning:

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of the opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more than one member appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

(3) The appropriate Government may, at any state of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member)

(4) The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report, if any, of the Commission of Inquiry made by the Commission under Sub-section (1) together with a memorandum of the action thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.

21. Additional powers of Commission-

(1) Where the appropriate Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of Sub-section (2) or Sub-section (3) or Sub-section (4) or Sub-section (5) should be made applicable to a Commission, the appropriate Government, may by notification in the official Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

22. Perusal of Clause (2) of Article 187 would show that it is the Legislature of the State who may regulate the recruitment and conditions of persons appointed to the secretarial staff of the Assembly by law and, therefore, there is no interference of the State Government therein. Section 3 of the Commission of Inquiry Act empowers the "appropriate government" to appoint Commission of Inquiry for the purpose of making an enquiry into any definite matter of public

importance. The definition of "appropriate government" has been given in Clause (a) of Section 2 of the Act and for the "State" Sub-clause (ii) has been given as under:

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

(a) "appropriate Government" means-

(i)....

(ii) the State Government, in relation to a Commission appointed by it to make an inquiry into any matter related to any entries enumerated in List II or List III in the Seventh Schedule of the Constitution.

23. In view of the above, the State Government is the appropriate Government in relation to a Commission appointed by it to make an inquiry into any matter enumerated in List II, i.e., the State List or List III, i.e., the concurrent list. The scope of the State Government to appoint commission of inquiry is limited to matters enumerated in List II or List III and not beyond that. In respect of State Legislative Assembly only entries 37 to 40 have been given in List-II which are as under:

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State. Entry 45 of List III reads as under:

45. Inquiries and statistics for the purposes of any of the matter specified in List II or List III.

24. However, in the Union List, residuary legislative power of Parliament under Article 248 has been given in Entry 97 of List-I which speaks as under :

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

Therefore, the Union Government has residuary power which has not been given to the State Governments in List II or List III, the State List or Concurrent List. The Hon'ble apex Court in a landmark decision in the case of State of Karnataka Vs. Union of India (UOI) and Another, has, inter alia, held that there is no

justification for reading down the provisions of Section 3(1) of the Commissions of Inquiry Act so as to limit the power of the Central Government to appoint a Commission of Inquiry for enquiring into the conduct of persons in relation to matters concerning the affairs of the Union Government only. Section 3(1) empowers the Central Government to appoint a Commission for making an inquiry into any definite matter of public importance. The conduct of Ministers of State Government in the purported discharge of their official functions is certainly a definite matter of public importance within the meaning of Section 3(1). The Central Government does possess the power to collect facts in regard to allegations of corruption made by a Member of the State legislature against sitting ministers of the State Government. That power must undoubtedly be exercised sparingly and with restraint because under the guise of directing an inquiry u/s 3(1), the Central Government cannot interfere with the day-to-day working of the State Government.

25. Hence, the notification cannot be set aside as falling outside the scope of Section 3(1). In paragraph 188, the Hon'ble apex Court held as under:

Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, in so far as it decides that the Commissions of Inquiry Act, 1952 falls within the legislative competence of the Parliament in view of Entry 94 of List I and Entry 45 of List III must, with respect, be affirmed and accepted as good law. I may, however, add that if for any reason it were to appear, which it does not, that these entries do not justify the passing of the Act, the residuary Entry 97 of List I will in any event support the legislative validity of the Act. That entry confers on Parliament the power to legislate on "Any other matter not enumerated in List II or List III...." Entry 97 is in the nature of a residuary entry and the words "Any other matter" which appear therein mean "Any matter other than those enumerated in List I". If Entry 94 does not cover the impugned Act, "Inquiries" of the nature contemplated by the Act will fall within the description "Any other matter"; and if Entry 45 of List III and, admittedly, the whole of the State List are to be kept out of consideration, the Act will relate to "a matter not enumerated in List II or List III". Shri Sinha objected to recourse being had to Entry 97 of List I on the ground that it cannot any more than other entries in Lists I and III, confer on Parliament the power to make a law vesting in the Central executive supervisory control over the State executive. That contention having been rejected, Entry 97 will in any event sustain the legislative validity of the Act.

26. Each organ of the Republic is expected to know the limits of its own power. The Parliament under the Commission of Inquiry Act, 1952 has delegated its legislative functions to the appropriate Government and has conferred the discretion to appoint a commission if it is in its opinion necessary to do so and makes it obligatory on the Government to appoint a commission if there is resolution by the Legislature concerned. Therefore, for appointment of a commission there is necessity of a resolution by the Legislature of the State and if there is resolution of the State, certainly the other provisions are to be

followed, i.e., to lay before the House of the People or the House of Legislative Assembly of the State, the report of the commission on the inquiry made by the commission together with a memorandum of the action taken thereon by the State Government. Here it is also to be noticed that whether the State Government is capable of taking action on the basis of the report of the Commission against the act committed beyond its competence, i.e., in the Secretariat of the State Legislature which is not under the control of the State Government. Further the production of the report of the Commission before the House of Legislature of the State is not only the condition under Sub-section (4) of Section 3 but also compulsorily provides such production together with the memorandum of action taken thereon. Therefore, if the State Government is not competent to take action, there would be no question of production of memorandum of action taken which itself shows the limitations of powers of the State Government. It is a matter of consideration that when the State Government cannot take any action in the affairs of the Secretariat of the State Legislative Assembly or the State Legislative Assembly, how could there be compliance of the provisions of Sub-section (4) of Section 3 of the Act.

27. In the instant case, neither there is any resolution of the State Legislature to conduct an inquiry by the Commission nor is the State Government empowered to take action if the commission gives its report in respect of the alleged violation of the recruitment procedure and the illegal and unfair practice adopted in giving appointments and showing of favouritism and nepotism by misuse of official position, and the alleged corruption committed in purchase of computers for the Legislative Assembly etc.

28. No doubt the Government have jurisdiction under the concurrent list regarding criminal law but the criminal law does not include criminal act and that too in respect of appointment of a commission under the Commissions of Inquiry Act, 1952 for the alleged acts of omissions and commissions within the State Assembly Secretariat on which no action can be taken by the State Government and, as such, Section 5(4) of the Act cannot be complied with.

Whether the Executive is separate from the State Legislature under the Constitution. Chapter II of the Constitution containing Articles 153 - 167 relates to the Executive whereas Articles 168 - 212 under Chapter III of the Constitution relate to the State Legislature. Secretariat of the State Legislature has been described under Articles 187 of the Constitution which is reproduced below.

29. Secretariat of State Legislature.- (1) The House or each House of the Legislature of a State shall have a separate secretarial staff;

Provided that nothing in this Clause shall, in the case of the Legislature of a State having a Legislative Council, be considered as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or

Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under Clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have the effect subject to the provisions of any law made under the said clause.

30. Article 162 of the Constitution restricts the executive power of the State. Therefore, it is necessary to peruse the provisions of Article 162 which are reproduced as under:

162. Extent of executive power of State.- Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

31. Proviso to Article 162 restricts the executive power of the State in respect of matters with respect to which the Legislature of the State and the Parliament have power to make laws and in that regard the executive power of the State shall be subject to and limited by the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. Therefore, if the legislature enacts a law regulating the recruitment and conditions of service of the persons appointed to the secretarial staff of the House or Houses, the conduct of business in the house with regard to the discharge of functions in the secretariat of the house is within the scope of the legislature. If the legislature wants to conduct an enquiry into certain acts of omission and commission, it is open for the legislature to pass a resolution in the House in that regard. Here, it is necessary to again consider the provisions of Sub-section (1) of Section 3 of the Commission of Inquiry Act, 1952, which provides that the appropriate Government may if it is of the opinion that it is necessary so to do, and if a resolution in that behalf is passed by each house of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance. In this regard, it is necessary to mention here that in the instant case the State Legislature has not passed any resolution, is also a matter of consideration that the State Legislature which is competent to control its secretarial staff by making laws is quite competent to pass a resolution but when there is no resolution of the State Legislature in respect of conducting any inquiry into "any definite matter of public importance" and that too when the Legislature has not expressed it

opinion whether the matter in question is "matter of definite public importance", appointment of the Commission of Inquiry by the State Government would be beyond its domain. The Law Commission of India in its 24th Report has made its comments in that regard in para 21 as under:

We have discussed elsewhere the question whether the power of the Government to appoint a Commission should be restricted to cases where a resolution in that behalf is passed by the appropriate legislative authority, and have come to the conclusion that it is neither necessary nor desirable to fetter the discretion of the Government in any way. On the other hand, while the existing Act, in our opinion, correctly provides that Government should appoint a Commission if a resolution in that behalf is passed by the appropriate legislative authority, see no justification for excluding the Council of States or the Legislative Council in States which have two chambers from the purview of the Section.

32. The only reason given for confining the power to pass the resolution to the house of the People and to the Legislative Assemblies is the fact that under the Constitution the Ministers are responsible to these Houses. It was, however, conceded that if the Council of States or the Legislative Council were to pass a similar resolution, Government would be bound to give the greatest possible consideration to it and it was extremely unlikely that the resolution would not be given effect to. On the whole, we think there is no justification for making a distinction between the two Houses of the Legislature wherever two Houses exists. We, therefore, recommend that wherever the Legislature resolves that a Commission of Inquiry should be appointed the resolution should be by both Houses of the Legislature.

No doubt, the State Government can exercise its legislative authority even in the absence of a resolution of the legislature but it can be exercised only in respect of the matters enumerated in List II and List III of Seventh Schedule of the Constitution which are within its jurisdiction. Since the appointment of secretarial staff or making rules regulating their appointment or exercise of administrative or financial powers in the Secretariat of the Assembly is not vested with the State Government, no action can be taken by the State Government in the affairs of the Secretariat of the State Assembly.

34. In I.C. Golak Nath and Others Vs. State of Punjab and Another, , the apex Court held as under:

The Constitution is the fundamental law and no law passed under mere legislative power conferred by the Constitution can effect any change in the Constitution unless there is an express power to that effect given in the Constitution itself. But subject to such express power given by the Constitution itself, the fundamental law, namely, the Constitution, cannot be changed by a law passed under the legislative provisions contained in the Constitution as all legislative Acts passed under the power conferred by the Constitution must conform to the Constitution....

In the case of *State of Karnataka v. Union of India* (supra) the scope of enquiry involved the functioning of the executive of the State. The plea of the State Government was that its powers are derived from the Constitution and its existence and its exercise of powers as executive of the State is guaranteed by the Constitution, and the Centre cannot interfere with such exercise of executive functions. The question involved the extent of the executive power of the State and if any interference with that power by the Central Government would affect the legal right of the State. The plea on behalf of the Union Government was that Article 154 contemplates the exercise by the Governor of his executive power through officers subordinate to him in accordance with the Constitution. The submission was that when the powers are exercised through Ministers who, according to the learned Counsel for the respondent, are officers the right of such Ministers or officers are only interfered with and not the legal rights of the State. When the exercise of the executive function of the State through its officers is interfered with by the Central Government, it cannot be said that the legal right of the State is not affected.

35. The Constitution Bench as per majority has held that matters affecting relations between the Union Government and the State Government are not found mentioned specifically anywhere in the Union List. Item 97 of Union List corresponds to the residuary legislative powers of Parliament under Article 248 of the Constitution. It gives effect to Article 248. No doubt, resort to Article 248 read with item 97 of List I, could not overcome any specific constitutional bar against legislation on investigation of conduct of Ministers of any State Government in the discharge of their duties had there been one. There is certainly no such express and specific bar in our Constitution. The Constitution makers cannot always mention and exhaust every conceivable topic. It is in order to meet precisely such a situation that Article 248 read with Entry 97 was inserted. Hence Article 248 read with Entry 97 of List I will full cover Section 3 of the Act even if item 94 of List I may not. The term "inquiries", as used in item 94 of List I and item 45 of List III, without any limitations upon their nature or specification of their character or objects, is wide enough to embrace every kind of inquiry, whether a criminal offence by any one is disclosed or not by facts alleged. Entry 45 in List III must include inquiries to cover allegations against all persons which bring them within the sphere of Entry I of List III relating to criminal law. All that "inquiries" covered by Item 45 require is that they must be "for the purpose of any of the matters specified in List II or List III".

36. The language used - "any of the matters specified" - is broad enough to cover anything reasonably related to any of the enumerated items even if done by holders of ministerial officers in the States. Other subjects will be found in State List II. And, even assuming that neither Entry 94 of List I nor entry 45 of List III would cover inquiries against ministers in the State relating to acts connected with the exercise of ministerial powers. Article 248, read with Entry 97 of List I, must necessarily cover an inquiry against Ministers on matters of public importance whether the charges include alleged violations of criminal law or not.

There is express provision in the Constitution to cover an enactment such as Section 3 of the Act. Hence, there is no room whatsoever for applying the "Expressio Unius" rule to exclude what falls within an expressly provided legislative entry. The powers given to the Central Government by Section 3 of the Act could not be held to be invalid on the ground that the federal structure of the State is jeopardized. The Constitution, as its Preamble makes it clear, is of a sovereign republic. The legal sovereignty which it represents includes legal legislative sovereignty which must embrace the power of making any law on any subject. Such legislative power to enact any law must, therefore, vest somewhere in a legislative organ of the Republic. It cannot be placed anywhere outside these organs. The Parliament alone would have the power to enact by a simple majority, by reason of Article 248 read with Entry 97 of List I, if it falls neither in List II nor in List III. The three entries Nos. 94 and 97 of List I and 45 of List III are bound to cover, between them, legislation authorizing inquiries such as the one entrusted to the Grover Commission. If the subject of inquiries against ministers in State Government is not mentioned specifically either in any of the articles of the Constitution or in the legislative lists it does not follow from it that legislation covering such inquiries is incompetent except by means of a constitutional amendment.

37. On the contrary, such a subject would be *prima facie* covered by the wide terms of Article 248 for the very reason that the Constitution contains no express or implied bar which could curtail the presumably plenary powers of legislation of the Parliament. The Parliament has got residuary powers of legislation under item No. 97 of List I. This residuary power has not been conferred on the State Government and, therefore, the State Government cannot exercise the residuary power and can only exercise the limited power enumerated in List II and List III.

There are three pillars of the Constitution; the Legislature, the Executive and the Judiciary. All are independent and are not subordinate to each other. Hence, the Legislative Assembly cannot be subordinate to the Government as well as the Judiciary and, therefore, in our opinion, any matter related to any of the three wings each being competent enough to take action in their respective affairs, the State Government cannot have jurisdiction over the executive action taken by the Speaker in the Legislative Assembly. In view of the above, recruitment of the employees of the State Legislative Assembly or purchases made by the State Legislative Assembly does not come within the above four entries and, therefore, the appointment of Commission of Inquiry is beyond the scope of the "appropriate government" in respect of the Legislative Assembly.

38. In view of the facts and circumstances mentioned above, this Court is of the opinion that since the State Government has no jurisdiction to take any action in the affairs of the State Legislative Assembly and in Sub-section (4) of Section 3 of the Commission of Inquiry Act, it has been provided that the report of the Commission is to be laid before the Legislature of the State together with the memorandum of action taken thereon which is not feasible to be complied with

and also the affairs of the State Assembly or its Secretariat have not been enumerated in List II or List III of the Seventh Schedule of the Constitution and the State Government has not been conferred with the residuary power as has been conferred to the Central Government under Entry 97 of List II, the appointment of the Commission under the Commission of Inquiry Act in the instant case is beyond the jurisdiction of the State Government. We do not mean here that if in the opinion of the Legislature, some wrong has been done, the same should not be enquired into.

39. In the result, the writ petition is allowed, the impugned notification dated 15th September, 2004 appointing the Commission with retrospective effect, i.e., with effect from 22nd July, 2004 is held illegal and is accordingly quashed.

However, we cannot debar the Legislature to take appropriate action in accordance with law. The Legislature has full jurisdiction to pass resolution and also entrust the enquiry or investigation to any one in their discretion in accordance with law.

There shall be no order as to costs.

A.K. Parichha, J.

I agree.