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AIR 1993 SC 825 : AIR 1992 SC 825 : (1993) JLJ 1 : (1992) 6 JT 235 : (1992) 3 SCALE 45 : (1993) 1 SCC 302 : (1992) 2 SCR 274 Supp

Supreme Court of India

Case No: Writ Petns. (C) No"s. 655-69 of 1983 , 175/92 with 8131-33, 8125-30, 8349-8368 and 8146-66 of 1982, 9610-9630/82, 3756-87/83, 3698-3755/83, 9947-960/83, 250/86, C.A. No"s. 4099-4103/82, 10753-57/83, 10758-6083, 10761/83, W.P. No. 1284/85, C.A. No"s. 12

State of Madhya Pradesh		APPELLANT
	Vs	
Ajay Singh and others State of Madhya Pradesh Vs M/s. A. and A. Enterprises, and others		RESPONDENT

Date of Decision: Nov. 2, 1992

Acts Referred:
Commissions of Inquiry Act, 1952 â€" Section 10, 11, 2, 3(3), 6#Constitution of India, 1950 â€" Article 136#General Clauses Act, 1897 â€" Section 14, 16, 21#Industrial Disputes Act, 1947 â€" Section 7

Citation: AIR 1993 SC 825 : AIR 1992 SC 825 : (1993) JLJ 1 : (1992) 6 JT 235 : (1992) 3 SCALE 45 : (1993) 1 SCC 302 : (1992) 2 SCR 274 Supp

Hon'ble Judges: S.P. Bharucha, J; J. S. Verma, J

Bench: Division Bench

Advocate: G. Ramaswany, Attorney General, G.L. Sanghi, B.K. Mehta, Santosh Hegde and R.R. Aggewal, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

J.S. Verma, J.
The petitioner State of Madhya Pradesh in both these petitions seeks leave to appeal under Article 136 of the Constitution against the common judgment and order dated 8.5.1992 of the High Court of Madhya

Pradesh in Miscellaneous Petition Nos. 481 of 1992 and 533 of 1992 under Article 226 of the Constitution. The High Court has allowed both these writ petitions.

2. The material facts are these. In Miscellaneous Petition No. 3909 of 1987 filed in public interest by Kailash Joshi, then Leader of the Opposition in Madhya Pradesh Vidhan Sabha and now a Cabinet Minister in Madhya Pradesh,

relating to the affairs of the Churhat Children''s Welfare Society and the lottery conducted by it, the M.P. High Court by its judgment dated 20.1.1989 issued a direction for setting up an independent high power agency to hold an inquiry

into the affairs of the said Society of which respondent No. 1 Ajay Singh was one of the office bearers. In compliance of that direction, the State Government passed a resolution on 24.2.1989 and also issued notification of the same date

having the effect of setting up a Commission of Inquiry consisting of Justice S.T, Ramalingam, a Judge of the Madras High Court to investigate into the affairs of the said Society and the lottery conducted by it. The resolution and

notification are as under :-

Bhopal, the 24th February, 1989

No. F. 1-3-89-I(i)-E.C. - Whereas the High Court of Madhya Pradesh in its order dated the 20th January 1989 in M.P. No. 3909/87 Kailash Joshi v. State of Madhya Pradesh and Ors. has directed that an inquiry be made by an

independent high power agency into the affairs of the Churhat Children''s Welfare Society and how the share of its profits derived from all or any other draws have been utilized and to take such action as may be required under the law

against the said Society and its organizing agent and that the State Government is of the view that the said order of the High Court should be implemented and carried out and whereas the State Government is also satisfied that this is a

definite matter of public importance which calls for an inquiry to be made, the State Government hereby appoints an independent high power agency presided over by Shri Justice S.T. Ramalingam, Judge of the Madras High Court.

2. The Headquarters of the Agency shall be at Jabalpur, Madhya Pradesh.

3. The terms of reference for inquiry by the aforesaid Agency shall be as under :-

(1) How the affairs of the Churhat Children''s Welfare Society are conducted and how the share of the profit derived and the money collected through lottery has been utilised ?

(2) What is the amount collected draw-wise, by the agent and the Society and what is the tax liability as per the Madhya Pradesh Lottery (Niyantran Tatha Kar) Adhiniyam, 1973 ?

(3) Whether any irregularities, illegalities and offences were committed in organizing the lottery, holding of draws of lottery, distribution of prizes, and in that event, the person responsible for the same;

(4) Any other matter incidental or connected with the above subject-matter of enquiry.

(4) The Agency may complete its enquiry and submit its report to the State Government within a period of six months from the date of issue of this Notification.

By order and in the name of the Governor of Madhya Pradesh,

R.C. Shrivastava, Secy.

Bhopal, the 24th February, 1989

No. F.1-3-89-I(i)-E.C. - Whereas by Government of Madhya Pradesh Resolution dated the 24th February 1989 and Notification No. F.1-3-89-I(i)-E.C., dated the 24th February 1989 an independent High Power Agency presided

over by Shri S.T. Ramalingam, Judge of the Madras High Court has been set up to hold an inquiry into the affairs of the Churhat Children''s Welfare Society;

And whereas the State Government having regard to the nature of the inquiry to be made and other circumstances of the case is of the opinion that provisions contained in Sub-sections (2) to (5) of Section 5 of the Commissions of

Inquiry Act, 1952, should be made applicable to the aforesaid Agency;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 5 of the Commissions of Inquiry Act, 1952, the State Government hereby directs that the provisions of Sub-sections (2) to (5) of Section 5 of the said

Act shall apply to the above described Agency.

By order and in the name of the Governor of Madhya Pradesh,

R.C. Shrivastava, Secy.

3. According to the terms of the above notification, the inquiry was to be completed within a period of six months from the date of issue of the notification. As the inquiry could not be completed within that period, by a notification dated

1,8.1990 the period for completing the inquiry was extended upto 22.8.1991; then by another notification dated 16.8.1991 the period was extended upto 31.3.1992; and then

by another notification dated 27.3.1992 the period for

completing the inquiry stands extended upto 31.3.1993.

4. In the meantime, Justice S.T. Ramalingam became due to retire as a Judge of the Madras High Court on 30.6.1991 on attaining the age of superannuation and, therefore, he wrote a letter dated 19.3.1991 to the Chief Secretary of the

State drawing attention to this fact and requesting that necessary modalities be worked out well in time for his continuance as Commission of Inquiry in the light of the guidelines issued by the Government of India for the benefits and

emoluments payable to a Judge on his retirement in such a situation. Justice Ramalingam mentioned in that letter some of the facilities he expected, to which he would not be entitled from the Government of Tamil Nadu on his retirement.

The Chief Secretary R.P. Kapoor sent a reply to Justice Ramalingam by DO No. 504/CS/91 dated 9.4.1991 as under :-

My dear Hon''ble Justice Ramalingam, Thank you very much for your letter No. 53 of 19th March, 1991. The issues raised in your letter regarding the tenure of the Commission and the terms and conditions after your superannuation are under active consideration of the Government and I will be in a position to inform you after a final view is taken in this case. In the meanwhile may I request that the proceedings may be continued so that the inquiry can be completed at the earliest possible. With very kind regards,

Yours sincerely,

Sd/-

(R.P. Kapoor)

5. This letter of the Chief Secretary apart from promising to give an early reply also requested Justice Ramalingam to continue with the inquiry so that the same could be completed early. While the promised reply from the State

Government to Justice Ramalingam was awaited, the State Government, without further reference to Justice Ramalingam, issued a notification dated 10.7.1991 as under :-

Bhopal, the 10th July, 1991

No. F.1-6-91-I-(8-Ka). - Whereas, an independent high power agency comprising of a single member namely Justice S.T. Ramalingam, Judge of the Madras High Court was appointed under this Department Notification No. F.1-3-89-

I(i)-E.C., dated the 24th February 1989;

And whereas Justice S.T. Ramalingam has retired as Judge of the Madras High Court, on 30th of June 1991;

And whereas for continuing in the said agency after retirement Justice Shri S.T. Ramalingam has placed certain terms and conditions which have not been found possible for the Government to accept.

Now, therefore, in exercise of the powers conferred by Sub-section (3) of Section 3 of the Commissions of Inquiry Act, 1952 (No. LX of 1952), the State Government hereby appoint Justice Shri G.G. Sohani, retired Chief Justice, High

Court of Patna (Bihar) as single member of the said agency in place of Justice Shri S.T. Ramalingam.

Accordingly this Department Notification Nos. (1)F.1-3-89-I(i)- E.C., dated the 24th February 1989, (2) F.1-3-89-I(i)- E.C., dated the 24th February 1989 and (3) F.1-3-89-I(i)- E.C., dated the 24th February 1989, shall stand

amended to this extent.

By order and in the name of the Governor of Madhya Pradesh

S.K. Misra, Secy.

6. Accordingly, by this notification, the State Government replaced Justice S.T. Ramalingam with Justice G.G. Sohani, retired Chief Justice of Patna High Court as the sole member of the Commission of Inquiry. The appointment of

Justice G.G. Sohani in place of Justice S.T. Ramalingam was challenged in the M.P. High Court by a writ petition - M.P. No. 2359 of 1991 - by respondent No. 1 Ajay Singh. By an interim order dated 30.7.1991 passed by the High

Court, the operation of the above notification dated 10.7.1991 was stayed. During the pendency of that writ petition, Justice G.G. Sohani conveyed to the State Government his disinclination to continue with the assignment and tendered

his resignation. Consequently, the High Court dismissed that writ petition as infructuous on 5.9.1991. It was only thereafter that the Chief Secretary of the State Government sent a letter dated 12.9.1991 in continuation of his earlier letter

dated 9.4.1991 to Justice Ramalingam which is as under :-

This is in continuation to my earlier letter No. 504/CS/91 dated 9th April, 1991 regarding the arrangement for the Commission of Enquiry (Churhat Children Welfare Society and Lottery), consequent to your superannuation as a Judge of

the Madras High Court.

2. The State Government have considered your communications about the inconveniences you were facing in coming to Jabalpur for want of Air-link between Madras and Jabalpur. The State Government have also considered the terms

and conditions mentioned in your letter of 19th March, 1991. On careful consideration of all aspects mentioned in your communications it has not been possible for the State Government to accept the terms and conditions set out in your

letter of 19th March for taking up the work of the above mentioned Enquiry Commission after your superannuation. The State Government had accordingly appointed Justice Mr. G.G. Sohani, retired Chief Justice of the Patna High

Court to be the single Member of the Commission. I am, however, happy to convey the deep appreciation of the State Government for the services rendered by you in the Commission in spite of all the personal inconvenience it has

caused. The Hon''ble Chief Minister had made a general mention of it in the Vidhan Sabha on the 4th July, 1991.

3. Delay in reply to your letter is regretted. It was caused because of the litigation arising out of the appointment of Justice Sohani which was since been decided.

Wishing you and your family a very happy life after your superannuation.

Yours sincerely,

R.P. Kapoor

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7. The State Government thereafter issued another notification dated 9.1.1992 as under:-

Bhopal, the 9th January 1992

No. F.1-6-91-I (8 Ka). - Whereas in exercise of the powers conferred by Sub-section (3) of Section 3 of the Commissions of Enquiry Act, 1952 (No. LX of 1952) Justice Shri G.G. Sohani, retired Chief Justice, High Court of Patna

(Bihar) was appointed as single member of an independent high power agency constituted under this department notification No. F.1-3-89-I(i)-E.C, dated 24th February 1998 in place of Justice Shri S.T. Ramalingam vide this

department Notification No. F.1-6-91-I(8 Ka), dated the 10th July 1991;

And whereas Justice Shri G.G. Sohani, retired Chief Justice, High Court of Patna (Bihar) has since withdrawn his consent to work as single member of the said agency;

Now, therefore, in exercise of the powers conferred by Sub-section (3) of Section 3 of the Commissions of Enquiry Act, 1952 (No. LX of 1952), read with Section 21 of the General Clauses Act, 1897 (No. 10 of 1897), the State

Government hereby appoint Justice Shri Kamlakar Choubey, retired Judge of the Allahabad High Court as a single member of the said agency in place of Shri G.G. Sohani.

Accordingly this department Notification Nos. (1) F.1-3-89-I(i)-E.C, dated 24th February, 1989, (2) F.1-3-89-I(i)-E.C., dated 24th February, 1989, and (3) F.1-3-89-I(i) E.C., dated the 24th February, 1989, shall stand amended to

this extent.

By order and in the name of the Governor of Madhya Pradesh,

Sushma Nath, Secy.

8. In this manner, the State Government after replacing Justice S.T. Ramalingam first by Justice G.G. Sohani, thereafter replaced him by Justice Kamlakar Choubey, a retired Judge of the Allahabad High Court, as the sole member of the

Commission. It is unnecessary to refer to the terms and conditions of appointment of Justice Kamlakar Choubey which were detailed in the General Administration Department Memo. dated 23.3.1991 and are referred in the High Court

judgment, which include the facility of a Camp Office for him at Varanasi and other facilities of vehicle, telephone and staff etc.

9. The appointment of Justice Kamlakar Choubey as the sole member constituting the Commission of Inquiry in this manner resulting in the replacement of Justice S.T. Ramalingam initially appointed for the purpose led to writ petitions -

M.P. Nos. 481 of 1992 and 533 of 1992 - for quashing the notification dated 9.1.1992 appointing Justice Kamlakar Choubey. Challenge to the notification dated 10.7.1991 issued earlier appointing Justice G.G. Sohani is academic in

view of Justice Sohani having resigned as indicated earlier. The remaining significance of the validity of the notification dated 10.7.1991 appointing Justice G.G. Sohani relates only to the State Government"s power to appoint another

person in place of Justice S.T. Ramalingam in the above circumstances.

10. The challenge of the writ petitioners before the High Court was that during the continuance as the single member of the Commission of Inquiry of Justice S.T. Ramalingam, there was no power in the State Government to replace him

as the member of the Commission and, therefore, the appointment first of Justice G.G. Sohani and on his refusal, of Justice Kamlakar Choubey, being without any authority, was invalid. On this basis, the relief of quashing the notification

dated 9.1.1992 appointing Justice Kamlakar Choubey was sought. In substance, the argument was that there being no vacancy in the office, the power u/s 3(3) of the Commissions of Inquiry Act, 1952, which is available only to fill any

vacancy could not be invoked and there was no other source of power available to the State Government for this purpose. The argument of the learned Advocate General on behalf of the State Government was that a vacancy had arisen

in the membership of the Commission on account of Justice Ramalingam''s retirement from Madras High Court on 30.6.91, and there being his implied resignation indicated by his inclination to continue on the terms and conditions

suggested by him, which the State Government did not consider feasible, the power of the State Government u/s 3(3) of the Commissions of Inquiry Act to fill the implied vacancy was available. It was also urged by the learned Advocate

General that vacancy in the office of the single member of the Commission was also implied from the fact that the appointment of Justice S.T. Ramalingam as the Commission of Inquiry was qua his status as a sitting Judge of the Madras

High Court and, therefore, his retirement as a Judge resulted in creation of the vacancy. The learned Advocate General also placed reliance on Section 16 of the General Clauses Act, 1897, in aid of the State Government''s power u/s

3(3) of the Commissions of Inquiry Act. Another submission of the learned Advocate General was that the State Government was the sole judge in this matter and was, therefore, competent to choose the person for making or continuing

the inquiry in view of the power available u/s 3 of the Commissions of Inquiry Act read with Section 16 of the General Clauses Act. The learned Counsel appearing on behalf of Kailash Joshi placed reliance on Section 3(2) of the

Commission of Inquiry Act read with Section 14 of the General Clauses Act to support the State Government''s action appointing Justice Kamlakar Choubey contending that the State Government had power to reconstitute the

Commission replacing Justice S.T. Ramalingam by another person. An argument challenging the locus standi of the writ petitioner was also faintly urged by counsel for Kailash Joshi.

11. The High Court allowed the writ petitions and quashed the notification dated 9.1.1992 appointing Justice Kamlakar Choubey. It held that there was no vacancy in the office of the single member of the Commission to empower the

State Government to fill the vacancy u/s 3(3) of the Commissions of Inquiry Act. On a construction of the provisions of the Commissions of Inquiry Act and those of the General Clauses Act relied on in support of the rival contentions,

the High Court came to the conclusion that there was neither any valid reason or ground nor any power available in the State Government to replace Justice S.T. Ramalingam by another person as was purported to be done by first

appointing Justice G.G. Sohani and then Justice Kamlakar Choubey, both of whom were also retired Judges. The objection to locus standi of the writ petitioners was also rejected. The relevant part of the directions made by the High

Court is as under :-

42. As a result of the aforesaid discussion, the petition succeeds and is hereby allowed. The notification dated 10.7.1991 (Annexure-H) and the consequent notification based thereon dated 9.1.1992 (Annexure-M) are hereby quashed.

It is open to the State Government to propose to Hon''ble Shri Justice S.T. Ramalingam the terms and conditions for his continuance as a member of the Commission equivalent to, less or more favourable than those offered and fixed for

Hon''ble Shri Justice Kamlakar Choubey. Thereafter depending on his reply the State Government may continue or discontinue his appointment or substitute another member in his place. It is also made clear that it would be open to

Justice Ramalingam to accept the terms and conditions offered by the State Government of Madhya Pradesh or to resign from the office, by taking a decision in that behalf early, so that the work of the Commission is not unduly

hampered and it is completed well within the extended period i.e. before 31st March, 1993....

12. Hence, these petitions for grant of special leave.

13. Leave granted.

14. Shri Shanti Bhushan, learned senior counsel for the State of Madhya Pradesh, expressly gave up the argument advanced before the High Court of the implied resignation of Justice S.T. Ramalingam giving rise to a vacancy or any

implied vacancy on retirement of Justice Ramalingam as a Judge of the Madras High Court to enable exercise of power u/s 3(3) of the Commissions of Inquiry Act for first appointing Justice G.G. Sohani and then Justice Kamlakar

Choubey in place of Justice S.T. Ramalingam. The case of the State of Madhya Pradesh in this Court was confined by Shri Shanti Bhushan to only one point. The only contention of Shri Shanti Bhushan is that the aid of Section 21 of the

General Clauses Act is available to the State Government for exercising its powers under the Commissions of Inquiry Act ''to add to, amend or vary'' the notification issued initially appointing Justice S.T. Ramalingam as the sole member

of the Commission which enables the State Government to reconstitute the Commission by replacing Justice S.T. Ramalingam with any other person in the circumstances of the case. He argued that it is in exercise of this power that the

period fixed initially for completion of the inquiry could be amended since, to the extent the provisions in the Commissions of Inquiry Act are silent, recourse can be had to Section 21 of the General Clauses Act for making a suitable

addition, amendment or variation of the initial notification. According to learned Counsel, the power to rescind any notification being provided in Section 7 of the Commissions of Inquiry Act, such a power in Section 21 of the General

Clauses Act was not available, but not so the power given by Section 21 of the General Clauses Act to add to, amend or vary any notification. Shri Shanti Bhushan also referred to Section 8-A of the Commissions of Inquiry Act as an

indication to support his submission of the Government''s power to reconstitute the Commission even during the availability of the person so appointed even though, he stated, Section 8-A is not the source of power for reconstitution of

the Commission.

15. In reply, Shri Kapil Sibal, learned senior counsel for respondent No. 1, submitted that the scheme of the Commissions of Inquiry Act does not permit invoking Section 21 of the General Clauses Act except for enlargement of the

period for completion of the inquiry by amendment of the notification only to that extent since the only situations in which reconstitution of the Commission can be made are provided in the Commissions of Inquiry Act itself and, therefore,

the context rules out the applicability of Section 21 of the General Clauses Act for any such purpose. Shri Sibal also submitted that the construction suggested by Shri Shanti Bhushan is alien to the scheme of the Commissions of Inquiry

Act. Shri Sibal added that Section 8-A of the Commissions of Inquiry Act was enacted for an entirely different purpose, to ensure continuity of the Commission''s work and has nothing to do with its reconstitution. Shri N.S. Kale, learned

Counsel for Kailash Joshi, while supporting the submission of Shri Shanti Bhushan added that Sections 14 and 16 of the General Clauses Act are also available to support the impugned notifications issued by the State Government.

16. In the ultimate analysis, the controversy surviving before us on the rival contentions is considerably narrowed. In substance, the only surviving controversy now is whether in the scheme of the Commissions of Inquiry Act, the power

''to add to, amend or vary'' any notification given by Section 21 of the General Clauses Act is available to reconstitute a Commission of Inquiry constituted u/s 3 of the Commissions of Inquiry Act by replacing the sole member appointed

initially with another person during the availability of the sole member initially appointed. The validity of the aforesaid impugned notifications dated 10.7.1991 appointing Justice G.G. Sohani and dated 9.1.1992 appointing Justice

Kamlakar Choubey to replace Justice S.T. Ramalingam depends on the answer to this question which alone now survives for decision.

17. A reference to the object and purpose of an enactment in the nature of the Commissions of Inquiry Act, 1952 would be worthwhile before proceeding to examine its scheme and the provisions therein. The object of the enactment, to

the extent it is relevant, while construing the meaning of its provisions may be of assistance.

18. The Commissions of Inquiry Act, 1952 is similar to and is modelled on the corresponding English statute and provides this historical background for the Indian statute. The purpose of such an enactment is aptly summarised in the

speech of Lord Salmon on ''Tribunals of Inquiry'' as under :-

In all countries, certainly in those which enjoy freedom of speech and a free Press, moments occur when allegations and rumours circulate causing a nation-wide crisis of confidence in the integrity of public life or about other matters of

vital public importance. No doubt this rarely happens, but when it does it is essential that public confidence should be restored, for without it no democracy can long survive. This

confidence can be effectively restored only by thoroughly

investigating and probing the rumours and allegations so as to search out and establish the truth. The truth may show that the evil exists, thus enabling it to be rooted out, or that there is no foundation in the rumours and allegations by

which the public has been disturbed. In either case, confidence is restored. How, in such circumstances, can the truth best be established ?

It is for the purpose of ascertaining the truth in such circumstances that the Commissions of Inquiry Act, 1952 has been enacted. While construing the provisions of the enactment, it would be useful to bear in mind its object if occasion

arises for illumination of any grey areas with reference to the object of the enactment as a permissible aid to construction.

19. The Commissions of Inquiry Act, 1952 was enacted to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers. Section 2 of the Act contains definitions. Section 3 provides for

appointment of a Commission of Inquiry. Sub-section (1) of Section 3 lays down that a Commission of Inquiry for the purpose of making an inquiry into any "definite matter of public importance" may be appointed by the appropriate

Government if it is of opinion that it is necessary so to do and shall make such an appointment 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. Sub-section (2) of Section 3 says that the Commission may consist of one or more members appointed by the appropriate Government, and where the number is more than one, one of them may be appointed as the

Chairman. Sub-section (3) of Section 3 enables the appropriate Government to fill any vacancy which may arise in the office of a member of the Commission whether consisting of one or more than one member, at any stage of an inquiry.

Sub-section (4) of Section 3 requires the appropriate Government to 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 together with a

memorandum of the action taken thereon, within a period of six months from the submission of the report by the Commission to the appropriate Government. Section 4 prescribes that the Commission shall have the powers of a civil court

while trying a suit under the CPC in respect of the matters mentioned therein. Section 5 deals with the additional powers of the Commission. Section 5-A relates to the power of

the Commission for conducting investigation pertaining to

inquiry. Section 5-B deals with the power of the Commission to appoint assessOrs. Section 6 provides for the manner of use of the statements made by persons to the Commission. Section 6-A provides that some persons are not

obliged to disclose certain facts. Section 7 deals with the manner in which a Commission of Inquiry appointed Section 3 ceases to exist in case its continuance is unnecessary. It provides for a notification in the Official Gazette by the

appropriate Government specifying the date from which the Commission shall cease to exist if it is of the opinion that the continued existence of the Commission is unnecessary. Where a Commission is appointed in pursuance of a

resolution passed by the Parliament or, as the case may be, the Legislature of the State, then a resolution for the discontinuance of the Commission is also to be passed by it. Section 8-A provides that the inquiry is not to be interrupted by

reason of vacancy or change in the Constitution of the Commission and it shall not be necessary for the Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place. Section

8-B prescribes that persons likely to be prejudicially affected by the inquiry must be heard. Section 8-C deals with the right of cross-examination and representation by legal practitioner of the appropriate Government, every person

referred to in Section 8-B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission. Sections 9, 10 and 10-A relate to ancillary matters while Section 12 contains the rule making

power of the appropriate Government. Section 11 provides that the Act is to apply to other inquiring authorities in-certain cases and where the Government directs that the said provisions of this Act shall apply to that authority and issues

such a notification, that authority shall be deemed to be a Commission appointed u/s 3 for the purposes of this Act. Admittedly, it is by virtue of Section 11 that the Commission of Inquiry appointed in the present case is deemed to be a

Commission appointed u/s 3 for the purposes of this Act because the Commission was constituted by a resolution of the Government pursuant to the direction of the M.P. High Court in the writ petition filed in public interest by Kailash

Joshi as indicated earlier. For the purposes of this case, the material provisions of the enactment are Sections 3, 7 and 8-A apart from Section 21 of the General Clauses Act, 1897 with reference to which the rival contentions were made.

20. These provisions are as under :-

The Commissions of Inquiry Act, 1952

3. Appointment of Commission.- (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, 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 opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members 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 stage 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 on the inquiry made by the Commission under Sub-section

(1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.

7. Commission to cease to exist when so notified.- (1) The appropriate Government may, by notification in the Official Gazette, declare that -

(a) a Commission (other than a Commission appointed in pursuance of a resolution passed by each House of Parliament or, as the case may be, the Legislature of the State) shall cease to exist, if it is of opinion that the continued existence

of the Commission is unnecessary;

(b) a Commission appointed in pursuance of a resolution passed by each House of Parliament or as the case may be, the Legislature of the State, shall cease to exist if a resolution for the discontinuance of the Commission is passed by

each House of Parliament or, as the case may be, the Legislature of the State.

(2) Every notification issued under Sub-section (1) shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.

8-A. Inquiry not to be interrupted by reason of vacancy or change in the Constitution of the Commission. - (1) Where the Commission consists of two or more members, it may act notwithstanding the absence of the Chairman or any

other member or any vacancy among its members.

(2) Where during the course of an inquiry before a Commission, a change has taken place in the Constitution of the Commission by reason of any vacancy having been filed or by any other reason, it shall not be necessary for the

Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place.

The General Clauses Act, 1897

21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws. Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that

power includes a power, exercisably in the like manner and subject to the like sanction and conditions (if any) to and to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued.

21. It may be mentioned that Sub-sections (3) and (4) of Section 3 and Section 8-A were inserted while Section 7 was substituted in the Commissions of Inquiry Act, 1952 by the Commissions of Inquiry (Amendment) Act, 1971 (No.

79 of 1971) as a result of the recommendations of the Law Commission of India made in paras 26 and 34 of its 24th Report. In para 26, the recommendation made was to amend Section 3 of the Act "to provide expressly for the filling

up of vacancy or for an increase in the number of members whenever the Government thinks it necessary or expedient to do so". In para 34 of the Report, the recommendation was to insert a new Section 8-A in the light of the proposed

amendment in Section 3 to clarify that "it is not necessary for the Commission to recommence its inquiry if a change takes place in the Constitution of the Commission during the pendency of an inquiry"". The legislative history of Sub-

section (3) of Section 3 and Section 8-A inserted simultaneously by amendment of the Act shows their interrelation and the object of enacting Section 8-A is to clarify that the inquiry is not required to recommence or be interrupted by

reason of the filling of any vacancy or decrease in the number of members of the Commission. Section 8-A along with Sections 8-B and 8-C inserted simultaneously by amendment in the principal Act relate to the procedure of the

Commission and were inserted to provide for specific situations while Section 8 contains the general power of the Commission to regulate its own procedure.

22. The real question for decision in the present case is : Whether the appropriate Government after constituting the Commission u/s 3 of the Act is empowered to reconstitute the Commission substituting another person as the sole

member in place of the initial appointee? In substance, it is this power that the State Government claims to have exercised in the present case and is attempted to be justified by the argument advanced by Shri Shanti Bhushan to support

the appointment first of Justice G.G. Sohani and then of Justice Kamlakar Choubey in place of Justice S.T. Ramalingam. To recapitulate, the argument of Shri Shanti Bhushan is that the power of reconstituting the Commission in this

manner is available to the State Government u/s 21 of the General Clauses Act which can be invoked in aid of the power of the Government u/s 3 of the Commissions of Inquiry Act. Section 8-A of the Commissions of Inquiry Act is

referred to by Shri Shanti Bhushan as an indication of the existence of this power in the State Government even though he does not rely on it as a source of this power. Shri Kapil Sibal, on the other hand, contends that the scheme of the

enactment shows that the appropriate Government cannot interfere with the working of the Commission after its Constitution except in the manner expressly provided in the Act

and Section 7 is a clear indication that interference with the

functioning of the Commission is not permissible in any other manner. Shri Sibal contends that Section 21 of the General Clauses Act is not available to support the Government''s action in the present case.

23. Shri Shanti Bhushan concedes that there is no express provision in the Commissions of Inquiry Act, 1952 empowering the Government to replace or substitute the sole member of a Commission with another person during the

continuance of the Commission, but he submits that this is implicit in the power to appoint a Commission and designate its personnel under Sub-sections (1) and (2) of Section 3 of the Commissions of Inquiry Act read with the power to

amend or vary any notification available u/s 21 of the General Clauses Act. Shri Shanti Bhushan also conceded that the aid of Section 21 of the General Clauses Act is available only if the context and the scheme of the Commissions of

Inquiry Act so permits. He submitted that the Government''s power to extend the time specified in the initial notification for completing the work of the Commission is not to be found in any express provision in the Commissions of Inquiry

Act, but is exercised by amendment of the initial notification only u/s 21 of the General Clauses Act. According to Shri Shanti Bhushan, the appointment of a Commission is under Sub-section (1) and it is under Sub-section (2) of Section

3 that the person constituting the Commission is appointed even though it may be a simultaneous process. The replacement of the member initially appointed to constitute the Commission, according to learned Counsel, is by re-exercise of

the power under Sub-section (2) of Section 3. The submission is that the Commission appointed under Sub-section (1) of Section 3 continues while it may be reconstituted by replacement of the member which is done under Sub-section

(2).

24. In our opinion, the power of the Government to appoint a Commission of Inquiry and name the person or persons constituting it is in Sub-section (1) of Section 3 and is not an exercise divided between Sub-sections (1) and (2) of

Section 3 as suggested by Shri Shanti Bhushan. Sub-section (2) merely confers the power in the Government to appoint a Commission consisting of one or more members and provides that if there be more than one member of the

Commission, then one of them may be appointed Chairman of the Commission. It is not as if Sub-section (1) deals with mere appointment of a Commission of Inquiry without

clothing it with its personnel and the power to appoint the

member/members thereof is to be found only in Sub-section (2). That apart, there is nothing in any of these provisions to suggest that the Government has the power to reconstitute the Commission after its appointment by replacing the

existing sole member with another person, Sub-section (3) deals expressly with the Government''s power to fill any vacancy which may have arisen since the Constitution of the Commission. The question of replacement of a member

appointed initially is obviously beyond its scope.

25. Sub-section (3) inserted by amendment in Section 3 of the Commissions of Inquiry Act, 1952 is a clear contra-indication to the construction suggested by Shri Shanti Bhushan of Sub-sections (1) and (2) of Section 3 in the scheme of

the Act. If the construction suggested by Shri Shanti Bhushan be correct, there was no need to make this amendment and insert Sub-section (3) which is a clear indication of the limit and extent to which the power of reconstitution of the

Commission can be exercised by the Government after the Commission has been constituted. As the Law Commission''s Report itself indicates, this amendment became necessary to provide expressly in the statute for the Government''s

power to fill any vacancy after the initial constitution. Whatever may have been the position prior to insertion of Sub-section (3) in Section 3, there can be no doubt that after its insertion, the scheme of the enactment excludes the power of

reconstitution of the Commission in a manner not expressly provided therein. In view of Sub-section (3), it is not permissible to construe Sub-sections (1) and (2) of Section 3 in any other manner. If the scheme of the enactment gave such

wide power to reconstitute a Commission after its initial Constitution and permitted replacement or substitution of the existing member of a Commission with another person sans Sub-section (3) of Section 3, the power to fill any vacancy

was not required to be provided separately and expressly. The mere fact that such a provision was considered necessary and has been enacted by inserting Sub-section (3) is sufficient to negative such a contention. It is also significant

that in the amendment so made the power is limited only to filling any vacancy without conferring any power to reconstitute the Commission by replacement or substitution of the existing member which indicates that no such power of

replacement or substitution of the existing member was contemplated in the scheme of the Act or intended to be conferred on the Government even after the amendment.

Section 8-A was simultaneously inserted by amendment to provide

that the procedure does not require interruption of the inquiry by reason of change in the Constitution of the Commission due to filling any vacancy or decrease in the number of members. The expression ''or by any other reason'' in Sub-

section (2) of Section 8-A cannot be widened to include the reason of reconstitution of the Commission by replacement or substitution of the existing member since that power is not available to the Government in the scheme of the Act

and, therefore, this expression in Section 8-A(2) cannot be read as conferring any additional power or giving any such indication. The expression ''or by any other reason'' following ''vacancy having been filled'' in Section 8-A(2) must,

therefore, mean any other reason, such as decrease in the number of members, when the initial number is more than one, and the vacancy remains unfilled. It cannot mean substitution of the existing member with another person, since no

such power exists. Shri Shanti Bhushan has rightly submitted that Section 8-A(2) is not the source of an additional power but merely an indication of the power to reconstitute the Commission. The indication is of the power of

reconstitution being available only in the manner indicated.

26. In this context, reference to Section 7 of the Commissions of Inquiry Act, 1952 is also apt. This provision lays down that the Commission would cease to exist when the appropriate Government by notification declares that ''the

continued existence of the Commission is unnecessary''. Such a notification issued u/s 7 in the event of the continued existence of the Commission becoming unnecessary has the effect of rescinding the notification issued u/s 3 of the Act

constituting the Commission. The enactment, therefore, also provides in Section 7 the only situation in which the Government can rescind the notification issued u/s 3 constituting the Commission. To the extent to which express provision is

made in the enactment, it is common ground, Section 21 of the General Clauses Act, 1897 cannot be invoked. These aspects have to be borne in mind while considering the tenability of the submission made by Shri Shanti Bhushan with

the aid of Section 21 of the General Clauses Act.

27. It is common ground before us that Section 21 of the General Clauses Act can be invoked only if, and to the extent, if any, the context and the scheme of the Commissions of Inquiry Act so permits. The general power in Section 21

of the General Clauses Act is "to add to, amend, vary or rescind any notification" etc. In the context of reconstitution of the Commission, the power to fill any vacancy in the office of a member of the Commission is expressly provided in

Sub-section (3) of Section 3 of the Commission of Inquiry Act. Similarly, the power to discontinue the existence of the Commission when it becomes unnecessary can be exercised by issue of a notification in accordance with Section 7 of

the Act which results in rescinding the notification issued u/s 3 constituting the Commission. Thus, the power to rescind any notification conferred generally in Section 21 of the General Clauses Act is clearly inapplicable in the scheme of

the Commissions of Inquiry Act which expressly provides for the exercise of this power in relation to a Commission constituted u/s 3 of the Act. The only material remaining general powers in Section 21 of the General Clauses Act are

the power to "amend" or "vary" any notification. The extent to which the Constitution of the Commission can be amended or varied by filling any vacancy in the office of a member as provided in the Commissions of Inquiry Act is also

obviously excluded from the purview of Section 21 of the General Clauses Act which cannot be invoked for this purpose.

28. The surviving question, therefore, is : Whether there is power to reconstitute the Commission by replacement or substitution of the existing member, though not provided in the Commissions of Inquiry Act by invoking the residuary

power to amend or vary any notification u/s 21 of the General Clauses Act? In the first place, in a case like the present where the scheme of the Commissions of Inquiry Act does provide for amendment and variation of the notification

issued u/s 3 for the purpose of reconstitution of the Commission in the manner indicated, even that power to amend or vary any notification by virtue of Section 21 of the General Clauses Act must be taken as excluded by clear

implication in the sphere of reconstitution of the Commission. Moreover, the power to amend or vary cannot include the power to replace or substitute the existing composition of the Commission with an entirely new composition. Shri

Shanti Bhushan submitted that the time specified in the initial notification for completing the task of the Commission is enlarged by subsequent notification and this is done in exercise of the general power available under the General

Clauses Act to extend time. This submission does not support the argument of learned Counsel that the general power u/s 21 of the General Clauses Act is also available to

reconstitute the Commission by replacement or substitution of its

sole member. The aid of Section 21 of the General Clauses Act for enlargement of time does not conflict with the context or scheme of the Commissions of Inquiry Act.

29. The context as well as the scheme of the Commissions of Inquiry Act, 1952 clearly indicate that Section 21 of the General Clauses Act, 1897 cannot be invoked to enlarge the Government''s power to reconstitute the Commission

constituted u/s 3 of the Act in a manner other than that expressly provided in the Commissions of Inquiry Act. There being no express power given by the Commissions of Inquiry Act to the appropriate Government to reconstitute the

Commission of Inquiry constituted u/s 3 of the Act by replacement or substitution of its sole member and the existence of any such power being negatived by clear implication, no such power can be exercised by the appropriate

Government. The scheme of the enactment is that the appropriate Government should have no control over the Commission after its Constitution u/s 3 of the Act except for the purpose of filling any vacancy which may have arisen in the

office of a member of the Commission apart from winding up the Commission by issuance of a notification u/s 7 of the Act if the continued existence of the Commission is considered unnecessary. The vacancy in the office of a member of

the Commission may arise for several reasons, including resignation by the member, when the Government''s power to fill the vacancy u/s 3(3) of the Act can be exercised. Even though a case of implied resignation creating an implied

vacancy was set up by the State of Madhya Pradesh before the High Court, that stand was rightly abandoned before us by Shri Shanti Bhushan.

30. We have no doubt that the rule of construction embodied in Section 21 of the General Clauses Act cannot apply to the provisions of the Commissions of Inquiry Act, 1952 relating to reconstitution of a Commission constituted

thereunder since the subject-matter, context and effect of such provisions are inconsistent with such application. Moreover, the construction made by us best harmonises with the subject of the enactment and the object of the legislation.

Restoring public confidence by constituting a Commission of Inquiry to investigate into a ''definite matter of public importance'' is the purpose of such an exercise. It is, therefore, the prime need that the Commission functions as an

independent agency free from any governmental control after its constitution. It follows that after appointment, the tenure of members of the commission should not be

dependent on the will of the Government, to secure their

independence. A body not so independent is not likely to enjoy the requisite public confidence any may not attract men of quality and self-respect. In such a situation, the object of the enactment would be frustrated. This aspect suggests

that the construction made by us, apart from harmonising the provisions of the statute, also promotes the object of the enactment while the construction suggested by the appellant frustrates both.

31. Shri Shanti Bhushan placed reliance on the decision in 283386 . In that decision, the power of the appropriate Government u/s 7 of the Industrial Disputes Act, 1947 to constitute an industrial tribunal for a fixed period of time and to

constitute a new tribunal on the expiry of that period to hear and dispose of references made to the previous tribunal which had not been disposed of by that tribunal was upheld. Shri Shanti Bhushan contended that the observations made

in that decision are not confined to the exercise of that power on the expiry of the tenure of the tribunal first constituted. It was clearly indicated in that decision that "when the life of the first tribunal automatically came to end by efflux of

time, no question of vacancy in the office really arose and, therefore, it was not a case falling under Sub-clause (2) of Section 8 but the situation that arose fell within the ambit of Section 7". The observations made in that decision have to

be read in the context of the facts of that case. That decision is clearly distinguishable.

32. On the other hand, Shri Kapil Sibal placed reliance on 278337 . This decision also related to the reference of a dispute under the Industrial Disputes Act, 1947. It was pointed out that "it was well settled that the rule of construction

embodied in Section 21 of the General Clauses Act can apply to the provisions of a statute only where the subject-matter, context, and effect of such provisions are in no way inconsistent with such application". On this basis it was held

that it did not apply to Section 10(1) of the Industrial Disputes Act. On a construction of Section 10(1) of the Industrial Disputes Act, 1947, it was held that it does not confer on the appropriate Government the power to cancel or

supersede a reference made thereunder in respect of an industrial dispute pending adjudication by the tribunal constituted for that purpose. Reliance placed on Section 21 of the General Clauses Act on behalf of the Government to invoke

such a power by necessary implication was clearly negatived. The decision of this Court in Minerva Mills Ltd. (supra) was distinguished as we have already indicated. In our

opinion, the ratio in D.N. Ganguly (supra) supports the view

taken by us in the present case that Section 21 of the General Clauses Act cannot be invoked to support the impugned action of the State of Madhya Pradesh as contended by Shri Shanti Bhushan. The construction suggested by Sri

Shanti Bhushan is inconsistent with the provisions and the scheme of the Commissions of Inquiry Act, 1952 and must, therefore, be rejected.

33. Admittedly, the power u/s 3(3) of the Commissions of Inquiry Act, 1952 was not available to the State of Madhya Pradesh in the facts of the present case to appoint any other person replacing Justice S.T. Ramalingam as the sole

member of the Commission of Inquiry. The power under Sub-sections (1) and (2) of Section 3 read with Section 21 of the General Clauses Act or even Sections 14 or 16 thereof was also not available for this purpose, for the reasons

given earlier. Accordingly, the notification dated 10.7.1991 appointing Justice G.G. Sohani and the notification dated 9.1.1992 appointing Justice Kamlakar Choubey were both invalid. It is not unlikely that Justice G.G. Sohani may have

resigned forming the same opinion when his appointment was challenged. However, the State of Madhya Pradesh did not choose to reflect and reconsider the legality of its action in spite of the resignation of Justice G.G. Sohani and it

continued to move in the wrong direction by making another invalid appointment of Justice Kamlakar Choubey.

34. Consequently, these appeals are dismissed and the impugned judgment of the High Court quashing the notifications dated 10.7.1991 and 9.1.1992 is sustained for the aforesaid reasons given by us. The State of Madhya Pradesh

shall, in view of the retirement of Justice S.T. Ramalingam as a Judge of the Madras High Court in the meanwhile, take necessary action to finalise his terms and conditions in accordance with the guidelines issued by the Government of

India in this behalf. Such action be taken promptly to avoid any undue delay in completion of the Commission''s task. No costs.