

(1957) 04 BOM CK 0012

Bombay High Court

Case No: O.C.J. Miscellaneous Applications No"s. 48, 49 and 50 of 1957

Ram Krishna Dalmia

APPELLANT

Vs

Mr. Justice S.R.
Tendolkar

RESPONDENT

Date of Decision: April 29, 1957

Acts Referred:

- Commissions of Inquiry Act, 1952 - Section 3, 4, 5, 6, 7
- Constitution of India, 1950 - Article 133, 136, 14, 183, 20
- Penal Code, 1860 (IPC) - Section 175, 178, 179, 180, 228

Citation: (1957) 59 BOMLR 769

Hon'ble Judges: M.C. Chagla, C.J; S.T. Desai, J

Bench: Division Bench

Judgement

M.C. Chagla, C.J.

A notification was issued by the Central Government u/s 3 of the Commissions of Inquiry Act (Act LX of 1952). The notification set up a Commission consisting of Mr. Justice Tendolkar, N.R. Modi and S.C. Chaudhuri. It gave reasons for the appointment of the Commission and set out the matters into which the Commission was to inquire and make a report. The notification is in the following terms :-

New Delhi, the 11th December 1956

S.R.O. 2993-Whereas it has been made to appear to the Central Government that-

(1) a largo number of companies and some firms were promoted, and/or controlled by Sarvashri Ramkrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, Shital Prasad Jain or some on e or more of them and by others being either relatives or employees of the said person or persons, closely connected with the said persons ;

(2) large amounts were subscribed by the investing public in the shares of some of these companies ;

(3) there have been gross irregularities (which may in several respects and materials amount to illegalities) in the management of such companies including manipulation of the accounts and unjustified transfers and use of funds and assets ;

(4) the moneys subscribed by the investing public were in a considerable measure used not in the interests of the companies concerned but contrary to their interest and for the ultimate personal benefit of those in control and/or management; and

(5) the investing public have as a result suffered, considerable losses,

And whereas the Central Government is of the opinion that there should be a full inquiry into these matters which are of definite public importance both by reason of the grave consequences which appear to have ensued to the investing public and also to determine such measures as may be deemed necessary in order to prevent a recurrence thereof.

Now, therefore, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act (No. 60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of the following persons, namely:

Shri Justice S.R. Tendolkar, Judge of the High Court at Bombay-Chairman.

Shri N.R. Mody of Messrs. A.F. Ferguson & Co., Chartered Accountants-Member.

Shri S.C. Chaudhuri, Commissioner of income tax-Member.

The Commission shall inquire into, report on and in respect of:

(1) The administration of the affairs of the companies specified in the schedule hereto;

(2) the administration of the affairs of such other companies and firms as the Commission may during the course of its enquiry find to be companies or firms connected with the companies referred to in the schedule and whose affairs ought to be investigated and inquired into in connection with or arising out of the inquiry into the affairs of the companies specified in the schedule hereto ;

(3) the nature and extent of the control, direct and indirect, exercised over such companies and firms or any of them by the aforesaid Sarvashri Ramkrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, their relatives, employees and persons connected with them ;

(4) the total amount of the subscription obtained from the investing public and the amount subscribed by the aforesaid persons and the extent to which the funds and assets thus obtained or acquired were misused, misapplied or misappropriated ;

(5) the extent and nature of the investments by and/or loans to and/or the use of the funds or assets by and transfer of funds between the companies aforesaid ;

(6) the consequences or results of such investments, loans transfers and/or use of funds and assets ;

(7) the reasons or motives of such investments, loans, transfers and use and whether there was any justification for the same and whether the same were made bona fide in the interests of the companies concerned;

(8) the extent of the losses suffered by the investing public, how far the losses were avoidable and what steps were taken by those in control and/or management to avoid, the losses ;

(9) the nature and extent of the personal gains made by any person or persons or any group or groups of persons whether herein named or not by reason of or through his or their connection with or control over any such company or companies ;

(10) any irregularities, frauds or breaches of trust or action in. disregard of honest commercial practices or contravention of any law (except contraventions in respect of which criminal proceedings are pending in a Court of Law) in respect of the companies and firms whose affairs are investigated by the Commission which may come to the knowledge of the Commission and the action which in the opinion of the Commission should be taken as and by way of securing redress or punishment or to act as a preventive in future cases ;

(11) the measures which in the opinion of the Commission are necessary in order to ensure in the future the due and proper administration, of the funds and assets of companies and firms in the interests of the investing public.

SCHEDULE

1. Dalmia Jain Airways Ltd.

2. Dalmia Jain Aviation Ltd. (Now known as Asia Udyog Ltd.)

3. Lahore Electric Supply Company Ltd. (Now known as South Asia Industries Ltd.)

4. Sir Shapurji Broacha Mills Ltd.

5. Madhowji Dharamsi Manufacturing Company Ltd. 6. Allenberry & Co., Ltd.

7. Bharat Union Agencies Ltd.

8. Dalmia Cement and Paper Marketing Company Ltd. (Now known as Delhi Glass Works Ltd.)

9. Vastra Vyavasaya Ltd.

On January 9, 1957, another notification was issued which provided that all the provisions of Sub-sections (2), (3), (4) and (5) at Section 5 shall apply to the Commission which had been appointed. A further notification was issued on February 11, 1957, by which the time of two years was fixed within which the Commission was to inquire into the various matters and report to the Central Government.

2. The appointment of this Commission has been challenged by three petitions; by Ramkrishna Dalmia in one, by Shriyans Prasad Jain and Shital Prasad Jain in the second, and by Jaidayal Dalmia and Shanti Prasad Jain in the third. All these are persons whose affairs have to be investigated under the terms of the notification. The challenge is based on various grounds. The first ground is that the notification is outside the ambit of Act LX of 1952, and it is further urged that if the notification is within the ambit of the Act, then the Act itself is beyond the legislative competence of the Legislature. The second ground is that the notification offends Article 14 of the Constitution. The notification is also challenged on the ground that it has been issued mala fide. Reliance is also placed on Article 20(3) of the Constitution for challenging the notification, and it is finally urged that the notification is bad because originally no time limit was fixed and the subsequent fixation of time by the notification of February 11, 1957, does not and cannot cure the initial invalidity.

3. What is urged with regard to the first ground is that the notification is beyond the legislative competence of Parliament and that while Act LX of 1952 permitted Parliament to appoint a Commission, which would be within its legislative competence to appoint, the notification has appointed a Commission which is beyond its legislative competence. What is said is that on a plain and natural construction of the notification, the Commission has been appointed in order to investigate into individual wrongs and private disputes ; the Commission has been called upon to investigate into the acts and omissions of certain named individuals and companies ; that throughout the notification the accent is not on general behaviour but on individual behaviour ; that the Commission has not been appointed to investigate into any specific evil but has been appointed in order to unearth the wrong done by certain individuals and companies ; that an attempt has been made to adjudicate upon civil and criminal liability of these individuals and companies ; and that material is sought to be gathered in order to enable Government to launch civil and criminal proceedings against them. It is, therefore, said that the Commission has not been appointed to help the Legislature in its legislative function, but has been appointed in aid of the judicial function of the State, and, therefore, it is pointed out that by this notification the Legislature is encroaching upon the duties and functions reserved for the judiciary under the Constitution. Those contentions raise questions of far-reaching importance and we have had the benefit of a very full and able debate by counsel appearing on either side.

4. It is common ground that Parliament enacted Act LX of 1952 under entry 94 in List I and entry 45 in List III in the Seventh Schedule to the Constitution. These two entries confer upon Parliament the power to make any law with regard to inquiries, surveys and statistics for the purpose of any of the matters in any of the three lists. It is well settled that with regard to any legislative topic in any of the three Lists, the appropriate Legislature has the widest competence and the amplest power to legislate, and it is equally well settled that in construing any entry in the Lists the most liberal interpretation must be put upon it and it must be assumed that the Constitution intended to give to the appropriate Legislature not only the power to legislate directly with regard to any particular topic, but also the power to legislate with regard to all matters ancillary or subsidiary to the subject mentioned in the Lists. Therefore, when one looks at entry 94 and entry 45, the power to legislate with regard to inquiries, surveys and statistics in entry 94 and with regard to enquiries and statistics in entry 45 is not qualified or limited in any manner whatsoever. Therefore, Parliament may determine the mode and nature of the inquiries, surveys and statistics it wants to hold and it may lay down the procedure for them. The only possible limitation that one notices is that these inquiries etc. must be for the purpose of any of the matters in the Lists. " For the purpose " indicates the object for which the inquiries are to be held. It is rather significant that in Article 246, which deals with the subject-matter of laws to be made by Parliament and by the Legislatures of the States, power is conferred upon the Legislatures with respect to any of the matters enumerated in the Lists. In the two entries under consideration, although the power to make laws is with respect to inquiries etc., inquiries are not with respect to any of the matters in the Lists, but for the purpose of the matters in the Lists, and we are inclined to accept the contention put forward by counsel for the petitioners that " matters in the Lists " in the context mean heads of legislative power, and therefore inquiries can only be held in order to enable or assist the Legislature to exercise its legislative function with regard to any of the heads of legislative power in other words, inquiries can only be held in aid of legislation. The Legislature is entitled, indeed it is its duty, to inform itself about the conditions in the country in order to decide whether any legislation on any particular subject is necessary. It would be for the Legislature to say on what matters it needs information. It may wish to take the survey of the whole scene or it may limit its investigation to any particular aspect of the matter. It may wish to inquire into an evil generally or it may wish to inquire into any particular aggravated form of that evil. It may even desire that the conduct of an individual or individuals should be investigated into in order that the evil should be understood in a more emphatic form. The Court must also presume that when Parliament appoints a Commission for the purpose of inquiry, it is appointing it for a legitimate purpose. It would not be for the Court to speculate as to why the Legislature wants to know certain facts and why it wants to gather certain information. Unless it is established that the Legislature had an ulterior object or it was acting mala fide, there is hardly any limit to the nature and extent of the information that the Legislature may choose to elicit by instituting an inquiry by means of a Commission or otherwise.

5. The other contention of counsel for the petitioners is equally sound when they urge that the Legislature should not encroach upon the judicial functions of the State. The doctrine of separation of powers, which is so well known to the American Constitution, is not applicable in the same sense to our Constitution. There is no rigid separation here because, to take one instance, in a responsible form of Government a section of the Legislature itself is constituted the executive. But in a different sense, undoubtedly there is separation of powers under our Constitution. The State here functions through its three organs ; the legislative organ, the executive organ, and the judicial organ; and the Constitution has allocated to each organ its separate and independent functions, and it would not be open to the Legislature to perform a function which the Constitution has assigned to the judicial organ. Therefore, if in appointing a Commission the Legislature wishes to arrogate to itself the duties of the judicial organ, the appointment of such a Commission is clearly bad. Let us try and understand in what sense the Legislature may trespass upon the judicial power. Although it may set up special Courts, it cannot convert itself into a Court except in the very few cases dealing with privilege and impeachment with which we are not concerned. It may not inquire or investigate into individual wrongs or private disputes in order to bring the culprit to book and in order to gather materials for the purpose of initiating proceedings, civil or criminal, against him, because such inquiry or investigation is clearly not in aid of legislation but, what might be called, in aid of judgment. If a criminal prosecution is to be launched, the investigation must take place under the Criminal Procedure Code and such an investigation would be controlled by the judiciary. Therefore, it would not be open to the Legislature to start an investigation on its own. That would deprive the citizen not only of the protection afforded to him by the provisions of the Criminal Procedure Code, but would also constitute the Legislature into an authority parallel with the judiciary in laying down a procedure over which the Judge or the Magistrate could have no control.

6. Let us first of all look at Act LX of 1952 from the point of view of the principles which we have just enunciated. It is an enabling Act making it obligatory upon the appropriate Government, if a resolution is passed by the House of the People or the Legislative Assembly of the State, and leaving it to the discretion of the Government if it is of opinion that it is necessary so to do, to appoint a Commission of Inquiry by notification 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. It is important to note that an inquiry can only be into a definite matter of public importance. This emphasises the fact that all legislation is of public importance and the Legislature requires a Commission only if it wants to inform itself with regard to a matter of public importance. Section 4 enumerates the powers of the Commission which are of a coercive character and it can summon and enforce the attendance of any person and examine him on oath, require the discovery and production of any document, receive evidence on affidavits, requisition any public record or copy thereof from any Court or office, and issue commissions for the examination of witnesses or documents. Section 5 enables the appropriate Government to confer additional powers on the Commission, which powers

were conferred by the notification dated January 9, 1957. Among the powers is the power to file a complaint before a Magistrate for offences under Sections 175, 178, 179, 180 and 228 of the Indian Penal Code, and for that purpose the Commission is deemed to be a civil Court. u/s 6, no statement made by a person in the course of giving evidence before the Commission shall subject him to any civil or criminal proceeding except a prosecution for perjury.

7. Turning to the notification, it first sets out what has been made to appear to the Central Government, and that is that a large number of companies and firms were promoted or controlled by certain named individuals and by others connected with them, that large amounts were subscribed by the investing public in the shares of some of these companies, that there were gross irregularities in the management of such companies, that the moneys subscribed by the investing public were largely not used in the interest of the companies but in the interest and for the benefit of those in control and management, and that the investing public had suffered considerable losses. The notification then sets out the opinion of the Central Government that there should be a full inquiry into these matters which are of definite public importance both by reason of the grave consequences which appear to have ensued to the investing public and also to determine such measures as may be deemed necessary in order to prevent a recurrence thereof. Therefore, measures are clearly contemplated in order to obviate the possibility of similar things happening in the future. Then we come to the 11 heads into which the Commission has to inquire. Head (1) is the administration of the affairs of the companies which are set out in the schedule and which are nine in number. Then heads (2) to (6) specify the details into which the investigation has to be held, which include the affairs of other companies connected with the companies enumerated, the nature and extent of the control exercised, the amount of subscription obtained from the public, the misapplication of the funds and assets of the companies, the financial transactions between the companies and the consequences of such financial transactions. Then heads (7), (8) and (9) are more individual in their nature. Investigation has to be made into the reasons or motives of the financial transactions ; whether there was any justification for the same or whether they were made bona fide ; whether the losses suffered by the investing public could have been avoided, and what steps were taken by those in control and management to avoid the losses ; the nature and extent of the personal gains made not only by the persons named in the notification but by any person by reason of his connection with the companies. Head (10) deals with irregularities, frauds or breaches of trust or action in disregard of honest commercial practices or contravention of any law in respect of the companies and firms whose affairs are investigated by the Commission which may come to the knowledge of the Commission and the action which in the opinion of the Commission should be taken as and by way of securing redress or punishment or to act as a preventive in future cases. Certain pending criminal proceedings are taken out of the purview of the Commission. Finally, head (11) deals with the measures which in the opinion of the Commission are necessary in order to ensure in the future the due and proper administration of the funds and assets of companies and firms in the interest of the

investing public. If the last head of inquiry indicates the main reason for the inquiry, then undoubtedly the Legislature was seeking to inform itself with the object of deciding what legislation may be necessary in order to put down the evil indicated in the notification. It is futile then to suggest that many of the heads are concerned with individual wrongs and private disputes and not with an inquiry of a general character. Mr. Seervai graphically described the various heads as a crescendo leading up to head (10) which according to him was the main purpose of the Legislature, and head (11) being nothing more than a mere camouflage or a cloak to give legal respectability to the notification. In putting forward this contention Mr. Seervai in effect is accusing the Government of mala fides, and as we have already pointed out, if mala fides is established, then nothing more need be considered. But apart from mala fides we must give to each of the heads its due meaning and weight, and there is no reason whatever why we must discount the clear and emphatic intention manifested by Government that the inquiry was instituted in order to devise measures for preventing the recurrence of these misdeeds in future.

8. Clause (10) stands on a different footing. Under that head the Commission has to investigate into breaches of the law which may come to its knowledge and it has to recommend the action which in its opinion should be taken as and by way of securing redress or punishment or to act as a preventive in future cases. Both sides spent considerable time in advancing arguments as to what was the true construction to be placed upon this last part of clause (10). The Solicitor General was at pains to emphasise that even with regard to these breaches of law the recommendation was to be with regard to what should be done in future so, that the culprit would be punished and the victim would get redress. The Solicitor General has pointed out that clause (10) does not state that the action must be with regard to the matters enumerated in that clause, nor does it state that action must be against any individuals, and he asks us to read "in future cases" as qualifying not only the expression "to act as a preventive," but also "securing redress or punishment." We are afraid that the construction is much too strained, so strained that one almost hears the words creaking under it. It is impossible to take the view that "in future cases" qualifies "securing redress or punishment," and if it does not qualify these words, then it is clear that "securing redress or punishment" refers to the breaches of law enumerated in the earlier part of the clause. Therefore it is clear that the Commission is asked to point out to the Union Government what civil or criminal action can be taken with regard to these breaches of law. It is also significant that the expression used is "in future cases" and not "in the future" as is used in clause (11), and therefore there is also considerable force in the contention that "to act as a preventive in future cases" refers to breaches of law already discovered and the recommendation is to be with regard to action that should be taken in order to prevent similar breaches of law taking place in future in respect of companies into whose affairs the Commission has been investigating; and the suggestion is-which has again force-that it would be open to the Commission to suggest various proceedings that can be taken under Chap. VI of the new Companies Act which is intended for preventive action. In our opinion, it is clear that to the extent that the Commission has been asked to recommend

action for redress or punishment or to suggest action that may be taken under the provisions of the new Companies Act, the Commission has been asked to do something which is beyond the legislative competence of Parliament. The Commission has been called upon to do something which is not for the purpose of informing the Legislature in order to discharge its legislative function; it has been asked to inform the Government in order that Government should launch civil or criminal proceedings. Now, such an investigation can only be instituted by means of the judicial process and not through the device of a Commission. The result of permitting the Commission to do this would be to permit it to investigate into offences in a manner not warranted by the Criminal Procedure Code. The individuals named will be subjected to an inquiry without the protection afforded to them under the Criminal Procedure Code, and the investigation will be carried on without the judiciary vigilantly enforcing the safeguards in favour of these individuals. It is not open to the Government by this notification to put any individual in the position of an accused, to constitute a Commission to investigate into any offence that he might have committed, and to place before it materials collected so that on the strength of those materials a prosecution could be launched. To the extent that the first part of clause (10) can be related to clause (11), it would be competent to Government to get information with regard to breaches of law, so that legislation may be passed to prevent such breaches in future, and there is no reason to suggest why breaches of law referred to in the first part of clause (10) were to be investigated into only for the purpose of instituting civil or criminal proceeding and not also for the purpose of legislation. In our opinion, therefore, the last part of clause (10) from the words " and the action " to " in future cases " is ultra vires of the Act and the Government is not competent to require the Commission to make any report with regard to these matters. The interpretation that we have placed upon clause (10) receives additional support from the affidavit made by Mr. Patel, the Finance Secretary, where in para. 16 he says that the findings of the Commission will be a valuable aid to the Government both for legislation and for executive action ; and in para. 14 he denies the correctness of the submission that the words " for the purpose of any of the matters " occurring in entry 94 of List I in the Seventh Schedule to the Constitution mean for the purpose of enabling the legislative power being exercised or not exercised or for the purpose of being able to form a judgment about legislation and a commission of inquiry under the said Act can be appointed only for the aforesaid purposes.

9. That raises the question of severability The test of severability has been thus broadly defined (1) Whether the Legislature would have enacted the law without the part sought to be severed, and (2) whether the part sought to be severed is inextricably connected with the rest of the enactment. Now, looking to the whole notification, it is clear in our opinion that according to the Union Government the evil sought to be investigated was so grave and the necessity for measures to prevent a recurrence of the evil was also so clear, that apart from the question of prosecuting the evil-doers or taking civil proceedings against them, the Government would undoubtedly have set up this Commission for the purpose of inquiring into the other heads. It is also our view that the efficacy of the

notification is in no way affected by our severing the part suggested by us. There is no inextricable connection between the part which we are severing and the rest of the notification. It has been argued by Mr. Pathak that the principle of severability has no application in this case because the appointment of a Commission is left to the subjective determination of the Government and it cannot be said that Government would have appointed the Commission if the Commission could not investigate into one of the heads. Reference is made to the cases decided under the Preventive Detention Act where it has been held that where one of the grounds of detention was extraneous to the Act or vague and even though the other grounds were valid, and the Courts have set aside the order of detention. In our opinion, the notification we are considering and the Preventive Detention Act are not in pari materia. The Government could have appointed a Commission to investigate with regard to each one of the heads and the Government has come to the conclusion that each one of the heads must be investigated into. Therefore, it is impossible to say that Government would not have appointed a Commission because the investigation with regard to a particular head, or rather a part of a head, is not permissible in law.

10. A very careful investigation was made by counsel into what the position is in America with regard to this matter in the light of the decided cases of the Supreme Court of America. Both in United States and in England constitutional lawyers have always assumed that the Congress on the one hand and Parliament on the other have inherent power to appoint commissions in aid of legislation, and as we shall presently point out, the Supreme Court of America by a series of decisions has emphatically asserted the right of the Congress to investigate into even individual matters provided it is done for the legitimate purpose of law-making. We are perhaps more fortunate than either the United States or England, because whereas the powers of the Legislatures in those two countries are inherent powers, under our Constitution, as already pointed out, express powers are conferred both upon Parliament and the State Legislature by entry 94 and entry 45 in Lists I and III.

11. Strong reliance was placed by Mr. Pathak on *Kilbourn v. Thompson* (1881) 103 U.S. 168 : 26 Law C 377. In that case the House of Representatives passed a resolution reciting that the U.S. was a creditor of Jay Cook & Co. and to inquire into the nature and history of a certain real estate pool, and one Kilbourn refused to testify before the committee and thereupon Kilbourn was imprisoned under the warrant of the Speaker of the House of Representatives, and Kilbourn challenged the imprisonment as illegal, and the Supreme Court upheld the contention of Kilbourn. At p. 193 Mr. Justice Miller stated :

We do not, after what has been said, deem it necessary to discuss the proposition that if the investigation which that committee was directed to make, was one that was judicial in its character and which could only be properly and successfully made by a court of justice, and if it related to a matter in which relief or redress could be had only by a judicial proceeding, that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legislative department of the government. We

think it equally clear that the power asserted is judicial and that it is not legislative.

It is important to note that at p. 195 the judgment states that the report of the committee would have been fruitless because it could result in no valid legislation on the subject to which the inquiry referred. In the Analysis and Interpretation of the Constitution of the United States of America published under the authority of Government at p. 84 it is stated with regard to this case :

In the absence of any showing that legislation was contemplated as a result of the inquiry undertaken in *Kilbourn v. Thompson*, the Supreme Court concluded that the purpose was an improper one-to pry into matters with which the judiciary alone was empowered to deal.

The next sentence points out:

Subsequent cases have given the legislature the benefit of a presumption, that its object is legitimate.

12. The next case is that of *McGrain v. Daugherty* (1927) 273 U.S. 135 : 71 Lawed. 580. In that case the Senate appointed a committee to investigate into the administration of the Department of Justice and also the failure of the Attorney General to discharge his duty in various respects, Mally S. Daugherty, a brother of the Attorney General, refused to give evidence before the committee and thereupon he was arrested under a warrant issued under the authority of the Senate, and the question that the Supreme Court had to consider was whether the committee had the power to make the investigation which it had been directed to do. At p. 170 Mr. Justice Van Devanter explains *Kilbourn's* case :

The court pointed out that the resolution contained no suggestion of contemplated legislation that the matter was one in respect to which no valid legislation could be had; that the bankrupts' estate and the trustee's settlement were still pending in the bankruptcy court; and that the United States and other creditors were free to press their claims in that proceeding.

Then at p. 174:

We are of opinion that the power of inquiry--with process to enforce it--is an essential and appropriate auxiliary to the legislative function.

Further on (p. 175) :

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change ; and where the legislative body does not itself possess the requisite information--which not infrequently is true--recourse must be had to others who do possess it.

And the Supreme Court held against Daugherty on the ground that when the proceedings were rightly interpreted, the object of the investigation and of the effort to secure the witness' testimony was to obtain information for legislative purpose. It will be noticed that in that case, while inquiring into the administration of the Department of Justice under the terms of the resolution, the committee would also have to inquire into the individual conduct of the Attorney General.

13. The next case is that of *Sinclair v. United States* (1929) 279 U.S. 263 : 73 Law. ed. 692. the judgment states :

It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through "its committees, to require pertinent disclosures in aid of its own constitutional power, is not abridged because the information sought to be elicited may also be of use in such suits.

14. The law has been fairly succinctly summed up in a very recent decision of the Supreme Court in *Quinn v. United States* (1955) 349 U.S. 155 : 99 Law ed. 964 :

But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate. Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the fifth Amendment's privilege against self-incrimination which is in issue here.

Therefore, this decision clearly recognises the right of the Legislature to inquire into private affairs if they are related to a valid legislative purpose. The prohibition only applies when there is no relationship between the legislative purpose and an inquiry into a private affair. With regard to the arc of legislation, under our Constitution the area covers all the entries in the three Lists and, as we have already pointed out, the Legislature must not try to investigate in order to enforce a law. With regard to the Fifth Amendment, we will consider that question when we deal with Article 20(3).

15. Mr. Pathak has relied on a judgment of the Supreme Court in *Ram Prasad Narayan Sahi v. The State of Bihar* [1958] S.C.R. 1129. In that case the Sathi Lands (Restoration) Act passed by the Bihar Legislature was challenged. By that Act the settlement granted to the appellant was declared to be null and void and at p. 1142 Mr. Justice Mukherjea, as he then was, stated:

...The dispute here, is a legal dispute pure and simple between two private parties. What the Legislature has done is to single out these two individuals and deny them the right which every Indian citizen possesses to have his rights adjudicated upon by a judicial

tribunal in accordance with the law which applies to his case. The meanest of citizens has a right of access to a court of law for the redress of his just grievances and it is of this right that the appellants have been deprived by this Act. It is impossible to conceive of a worse form of discrimination than the one which differentiates a particular individual from all his fellow subjects and visits him with a disability which is not imposed upon anybody else and against which even the right of complaint is taken away.

In the case before us the Legislature has not taken upon itself to determine the rights or liabilities of the petitioners, nor has it prevented any judicial tribunal from adjudicating upon those rights or liabilities.

16. It has been suggested by Mr. Pathak that the Commission has been, authorised to apply the law to given facts and to determine the rights and liabilities of parties, and according to him this is a judicial function which the Legislature cannot discharge by the appointment of a Commission for the purposes of investigation. Now, it must be borne in mind that the only power that the Commission has is to make a report and embody in the report its recommendations. It has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*. A clear distinction must be drawn between a decision which has no force and no effect and a decision which becomes enforceable immediately or which can become enforceable by some action being taken. Lord Sankey L.C. in the judgment of the Privy Council in *Shell Co. of Australia v. Federal Commissioner of Taxation* [1931] A.C. 275 draws a distinction between a tribunal and a Court (p. 296) :

The authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power. It is conceded in the present case that the Commissioner himself exercised no judicial power. The, exercise of such power in connection with an assessment commenced, it was said, with the Board of Review, which was in truth a Court.

In that connection it may be useful to enumerate some negative propositions on this subject:

1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision.
2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body.

In *Prentis v. Atlantic Coast Line Co.* (1908) 211 U.S. 210 : 53 Law. ed. 150 it was observed (p. 255):

A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist.

Therefore, if the Commission we are considering merely investigates and declares a liability without having the power to enforce it, its inquiry cannot be looked upon as a judicial inquiry in the sense of its being in exercise of the judicial function of the state. As against this Mr. Pathak has relied on the [The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi](#) . In that case their Lordships of the Supreme Court were considering Article 136 of the Constitution, and the question was whether the Supreme Court could entertain an application for leave to appeal from a decision of a tribunal under the Industrial Disputes Act, and the Supreme Court held that it had such jurisdiction. In that case, once the tribunal had given its decision, it became an award and that award became binding on an order passed by Government; but once the order of Government was passed, the award would become enforceable proprio vigore. Therefore, it could not be said of an industrial tribunal that it merely advises or reports to Government, nor could it be said of the Commission in question that at any time or under any condition its decision would become binding proprio vigore. In our opinion, therefore, this case has no application to the facts that we are considering.

17. We might shortly dispose of the allegations that the Government has been actuated by mala fides in issuing the notification and setting up the Commission. These allegations are contained in para. 4(k) of the petition. It is stated by the petitioners that the notification has been issued not for the purpose of carrying out the legitimate objects of the Act, but for the collateral purpose of harassing and victimizing the petitioners and ruining the business and credit of the petitioners. It is pointed out that lengthy and detailed investigations were made by expert auditors appointed by the Government of India in the case of various companies belonging to the Dalmia group, and although a long time has elapsed since, the only thing which the Government has done is to file a first information report in November 1953 in respect of one company, the Dalmia Jain Airways Ltd. It is further stated that by this Commission the Government has ordered a roving inquiry with a view to harass and ruin the petitioners and their relatives and associates. No particulars whatever are given in this paragraph as to why Government should single out the petitioners for harassment and victimization or what ulterior motive Government has for singling out the Dalmia group for the purpose of investigating into its affairs. In our opinion, there is no substance whatever in the contention that Government's action is mala fide. As already pointed out, if the allegation with regard to mala fide fails, then a presumption must arise that the inquiry instituted by the Commission is for a legitimate purpose and the legitimate purpose is in aid of legislation. It would be for the petitioners to displace that presumption and, in our opinion, the petitioners have failed to do so except with regard to the last part of clause (10) of the notification with which we have already dealt.

18. That brings us to the next serious head of challenge and that is that the notification offends Article 14 of the Constitution. There is no article of the Constitution which has come up of record before the Courts than Article 14, and, in our opinion, it is unnecessary

to refer to all the cases dealing with that article which were cited at the Bar. The law has now been clearly established and it may be stated in a very few words. Mr. Justice Das, as he then was, very recently in *Budhan Choudhry v. The State of Bihar* [1955] 1 S.C.R. 1040 has summarised the law in the following words (p. 1049) :

It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well-established that while Articles 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

It is also well established that the Legislature is not bound to extend a legislation to all cases which it might possibly reach. It may take into consideration practical exigencies, it may recognise degrees of harm, and confine the legislation where the need is greatest, and that a law which hits evil where it is most felt will not be overthrown because there are other instances to which it might have been applied; that the Legislature may proceed cautiously step by step ; and finally that the inequality produced in order to encounter the challenge of the Constitution must be actually and palpably unreasonable and arbitrary.

19. What is said is that there are other companies which are equally situated against which allegations have been made of similar malpractices, but only the companies in which, what might be conveniently called, the Dalmia group is interested, have been singled out for the purpose of inquiry. It is pointed out that the inquiry is of an inquisitorial character, that it is coercive in its nature and that the companies and individuals mentioned in the notification will be subjected to answering questions, giving inspection, etc. on pain of being prosecuted if they fail to carry out the requisition of the Commission. It is said that there is no intelligible differentia which distinguishes the companies in which the Dalmia group is interested from other companies, and even if there is any differentia, the differentia has no nexus whatsoever with the object which the notification seeks to achieve.

20. A Committee was appointed in 1950 known as the Bhabha Committee to investigate into the abuses of the working of companies. Prior to that in March 1946 Tricumdas Dwarkadas, a solicitor practising in Bombay and also a member of the Bhabha Committee, was appointed as an Officer on Special Duty to indicate the lines on which the Companies Act should be revised. Mr. Dwarkadas submitted some recommendations

but they were not complete and so Government appointed Mr. Thiruvengkatachari to make a further inquiry and he also submitted a report. On the basis of this report a memorandum on the amendment of the Indian Companies Act was drafted and this was circulated to various organizations and individuals for their opinion. The Bombay Shareholders Association submitted a memorandum to the Bhabha Committee and it annexed to that memorandum the memorandum submitted by the Association to Government in answer to the memorandum on the amendment of the Indian Companies Act which had been circulated by Government as already pointed out, and this memorandum of the Bombay Shareholders Association has been strongly relied upon by the petitioners for the purpose of pointing out that the evils alleged against the Dalmia group were not peculiar to that group, but that other groups controlling other companies were also charged with similar evils by the Bombay Shareholders Association. It is further pointed out that the Bhabha Committee having investigated these evils made their proposals for alterations and amendments in the Companies Act, that the Legislature acted upon the report of the Bhabha Committee and amended the Companies Act, and our attention has been drawn to various new provisions in the Act which according to counsel for the petitioners effectively deal with all the evils, and therefore it is urged that there was no need for any further remedial legislation, and the object of setting up the Commission was not to further amend the Companies Act but merely to single out the Dalmia group for the purpose of submitting it to the coercive procedure of the Commission. In our opinion, it is not necessary to go into the details of charges levelled by the Bombay Shareholders Association against other groups. We will assume that the Dalmia group was not the only group in India which possessed the ingenuity and the financial acumen to indulge in the various malpractices which resulted in considerable loss to the investing public and large profits to the group. But, if the Legislature is satisfied that the evil is best manifested in the actions of the Dalmia group and that the evil was at its worst where the Dalmias were concerned, it is perfectly competent to the Legislature to limit the field of inquiry and to constitute the Dalmia group into a class for the specific purpose of investigating into its financial transactions in order to inform itself as to how these transactions were effected, how the investing public was fooled or deceived, and how unlawful profits were made. It must be also remembered that the allegations made by the Bombay Shareholders Association, however responsible that body may be, were mere allegations which were not proved, and we have the affidavit of Mr. Patel who says that :

Inspectors were appointed under the Indian Companies Act 1913 to examine the affairs of three important companies controlled by these persons. The Inspectors so appointed to examine the affairs of Dalmia Jain Airways Ltd., submitted their report on the 27th November 1952. The Inspectors appointed to examine the affairs of "Dalmia Cement & Paper Marketing Co. Ltd., submitted their report on the 23rd May 1953, and the Inspectors appointed to examine the affairs of the Lahore Electricity Supply Co. Ltd. (subsequently called the South Asia Industries Ltd.) submitted their report on the 10th July 1956.

Therefore, in the case of three companies in which the Dalmia group was interested, Government had much more material than with regard to other companies. It is said that it is not open to Government by its own action to constitute a class, and the rather startling suggestion is made that it was the duty of Government to appoint Inspectors and investigate into the affairs of all the companies before it could take action and appoint a Commission to investigate into the actions of only one group. In our opinion, it is not for the Court to tell Government how it should discharge its executive function. If Government has information with regard to the Dalmia group which necessitated the appointment of Inspectors and inquiry into the affairs of that group, then Government was perfectly justified in doing that, and if in the result Government was satisfied that there was a prima facie case against the Dalmia group, then Government would be justified in differentiating the Dalmia group from other groups, Mr. Patel in his affidavit has also pointed out that the whole management, from the commencement, of the group of companies by the said persons was so organised as to utilise the companies-legal entities-for their own personal benefit and aggrandisement to the detriment of the investing public and the shareholders, a phenomenon which was rendered possible by the abuse of the provisions of the law, especially Company Law which were shown as having been complied with and by the use of methods practised and devices and by a combination thereof which were peculiar to the said group of companies and the said persons, and this group had organised a scheme of utilising the institution of corporate existence for the purpose of personal gain and aggrandisement. He also points out that apart from mismanagement and misapplication of the large funds of the said companies it had been found that there was an organised method of obtaining control of other companies with the help of funds of companies in which the public were interested and after obtaining control even at fabulous prices to utilise the accumulated reserves and funds of the acquired companies for their own personal benefit and aggrandisement to the detriment of the shareholders and to the detriment of the investing public. He further says that it has been found that the concept of corporate existence which is intended to facilitate investment in the private sector to achieve balanced economic development of the country has been abused by those who promoted the said companies and who were in control of the said companies which were managed and worked solely with the object of serving the purposes of the controlling individuals ignoring entirely the interest of the shareholders and the public. Therefore Mr. Patel points out that under the circumstances the Central Government after serious and repeated deliberations at the highest level came to the conclusion that the five matters set out in the preamble to the notification were definite matters of public importance as they affected the administration of company law and other relevant laws and the interest of the investing public in the private sector and therefore of the country and that hence a full inquiry was necessary into the said definite matters which are of definite public importance both by reason of the grave consequences which appear to have ensued to the investing public and the need to revise or amend the law so as to render such practices and methods impossible and to protect the investing public and facilitate investment in the private sector. He further points out that it was the considered opinion of the Government that unless the said

matters were fully inquired into and it was ascertained as to how those matters were put through and by what methods and unless it was ascertained as to how those persons who were in control of the companies and responsible for those transactions acted with reference to the said transactions, it would not be possible to remedy such evils either by legislation or otherwise. He again reiterates in para. 9 of the affidavit that Government was justified, having regard to the extraordinary and peculiar character of the transactions and operations of the said companies through the said persons who were in control of the said companies, in appointing the Commission to inquire into the affairs of the said companies and the actions of the said individuals, and in so doing Government was justified in treating the said companies and the said individuals as constituting a class by themselves. He further says that Government is not aware of other individuals or companies equally and similarly situated as the companies and the individuals mentioned in the notification.

21. It is urged by the petitioners that there is nothing peculiar about these allegations made by Mr. Patel and a careful perusal of the report of the Company Law Committee and the memorandum submitted by the Shareholders Association can make it amply clear that identical allegations were made against other groups. We find it difficult to understand or appreciate this argument. Why is Government prevented under Article 14 from saying : Vast malpractices are resorted to by people in control of companies. We have special information with regard to certain groups. This information shows how it was possible to defraud the public and make unlawful gains. A close and careful scrutiny into the methods and devices of this group will give us sufficient material for deciding what legislative actions should be taken to prevent a recurrence of such acts, and therefore instead of asking the Commission to launch upon a long and laborious inquiry into the administration of every company in India, we will limit the inquiry to a class about which, as already pointed out, we have special information and which, in our opinion, has succeeded in defrauding the public by a combination of devices and methods which are both extraordinary and peculiar. As already stated earlier, it is open to the Legislature to recognise degrees of harm and Government's view is that most harm has been caused by the Dalmia group, and merely because there may be other instances with regard to which the Commission may also have been appointed, that fact is not sufficient to overthrow the notification because the notification hits the evil where according to Government it is most felt. Strong reliance is placed by Mr. Pathak on the observation of Mr. Justice Patanjali Hastri in his dissenting judgment in [Chiranjit Lal Chowdhuri Vs. The Union of India \(UOI\) and Others](#), which observation he has repeated in the case already referred to: [Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others](#), :

Legislation based upon mismanagement or other misconduct as the differentia and made applicable to a specified individual or corporate body is not far removed from the notorious parliamentary procedure formerly employed in Britain of punishing individual delinquents by passing bills of attainder, and should not, I think, receive judicial encouragement.

Now, this observation was made with reference to the Sathi Lands (Restoration) Act of 1950 passed by the Bihar Legislature which, as already pointed out, declared that the settlement granted to the appellants shall be null and void, and, with respect, this observation must be read in that context. The observation does not imply that if mismanagement or misconduct of an individual or individuals has to be investigated into not for the purpose of punishing a delinquent or passing a bill of attainder but for the purpose of enabling the Legislature to legislate, and if the mismanagement or misconduct of an individual constitutes a peculiar circumstance distinguishing him from others, that mismanagement or misconduct can never be an intelligible differentia and Mr. Justice Das, as he then was, in his judgment in *Chiranjitlal Chowdhuri v. The Union of India* says (p. 938):

I do not find it necessary to say that mismanagement and neglect in conducting the affairs of companies can never be a criterion or basis of classification for legislative purposes.

Again, in that case Mr. Justice Fazl Ali at p. 882 points out :

...It is evident that the facts which were placed before the Legislature with regard to the Sholapur mill were of an extraordinary character, and fully justified the company being treated as a class by itself.

This observation fully applies to the facts of the case before us. With regard to the facts of the Dalmia group placed before Government, Government was satisfied that those facts were of an extraordinary character and that justified Government in treating the Dalmia group as a class by itself.

22. In our opinion, therefore, constituting of the Dalmia group as a class is justified both on the ground that there are intelligible differentia which differentiates this group from other groups and that there is nothing before us to justify us in holding that there are other groups equally placed or situated against which this notification could have been directed, and also on the ground that the differentia had a rational relation to the object sought to be achieved by the notification. The object sought is remedial legislation and the investigation into the actions of the group will help the Legislature to place on the statute book the necessary remedial legislation.

23. We had an interesting discussion as to the burden of proof in this case. There is a general presumption in favour of the constitutionality of an Act. Is there any difference in the position when the challenge to legislation is based under Article 14 ? Mr. Justice Das, as he then was, in [V.M. Syed Mohammad and Company Vs. The State of Andhra](#), stated that there was a strong presumption in favour of the validity of legislative classification and it was for those who challenge it as unconstitutional to allege and prove beyond all doubt that the legislation arbitrarily discriminates between different persons similarly circumstanced. So what is required is not merely an allegation on the part of the petitioner, but proof beyond all doubt. It has also been said by the Supreme Court of

America in *Middleton v. Texas Power & L. Co.* (1919) 249 U.S. 152 : 63 Law ed. 527 :

It must be presumed that a Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds.

In another American case, *Radice v. New York* (1924) 264 U.S. 292 : 68 Law ed. 690 it was observed (p. 294) :

Where the constitutional validity of a statute depends upon the existence of facts, courts must be cautious about reaching a conclusion respecting them contrary to that reached, by the legislature ; and if the question of what the facts establish be a fairly debatable one, it is not permissible for the judge to set up his opinion in respect of it against the opinion of the lawmaker.

But strong reliance is placed on an observation of Mr. Justice Mukherjea in [Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others](#), :

...But when on the face of a statute there is no classification at all, and no attempt has been made to select any individual of group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others, this presumption is of little or no assistance to the State.

And the learned Judge cites the observation of Mr. Justice Brewer in *Gulf, C. & S.F.R. Colorado Co. v. Ellis* (1897) 165 U.S. 150 : 41 Law ed. 666 that

to carry that presumption to the extent of holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory legislation is to make the protecting clauses of the 14th Amendment a mere rope of sand. (p. 155).

Now, it must be borne in mind that the observations of Mr. Justice Mukherjea were made in a rather extreme case in which the Legislature had interfered in a private dispute between the appellants and the State and had passed a declaratory law declaring the settlement granted to the appellants null and void. It does not seem to us necessary, with respect, that in every case the basis of the classification must appear on the face of the statute. Undoubtedly, it would be for the State in the first instance to satisfy the Court that there is a basis for classification, but that fact can be established by the materials placed before the Court by the State. Once the State makes out a prima facie case that there is a basis for classification, then the burden would be upon the person challenging the constitutionality of the legislation to prove beyond doubt that the classification is arbitrary and unreasonable. Even if it were necessary that the basis of the classification should appear on the face of the legislation, in our opinion, in this case the notification does disclose such a basis. The notification sets out five facts which have been made to appear to the Central Government and on the basis of these facts the Dalmia group has

been constituted a class. It is, therefore, for the petitioners to establish that there are other groups equally situated about which the same facts can be predicated. All that we have at the highest before us is the allegations made by the Bombay Shareholders Association, but no attempt has been made to establish that these allegations are correct.

23. Another interesting point was raised by Mr. Seervai that the presumption in favour of a Legislature that it understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and that the discriminations are based upon adequate grounds, can only be raised in favour of the Legislature and not the executive, and Mr. Seervai says that in the present case we are not dealing with legislation but we are dealing with a notification issued by Government. It is contended that Act LX of 1952 was an enabling Act enabling the Government to issue a notification, and when Government issues a notification there is no presumption that the classification made by it must necessarily be a reasonable classification. The answer to Mr. Seervai's contention is twofold. In the first instance, the notification we are considering is not an administrative order ; it is legislation, even though the legislation may be characterised as subordinate legislation, and the legislation is the result of a mandate given by the Legislature to Government, and we see no reason why the same presumption cannot arise in favour of this legislation. In the second place, we see no reason why the presumption that arises in favour of the Legislature should not arise in favour of Government. If the Legislature correctly appreciates the needs of its own people, is one to suggest that a Government responsible to the Legislature does not do so ? In *Pacific States Box & Basket Co. v. White* (1935) 296 U.S. 176 : 80 Law ed. 138 it was held that the presumption of the existence of a state of facts sufficient to justify the exertion of the police power attaches to orders of an administrative body as well as to statutes and municipal ordinances. We are also of the opinion that even assuming the burden was upon the State, by the materials it has placed before us in the affidavit of Mr. Patel it has discharged the burden.

24. The next question is the challenge made to the constitutionality of the notification under Article 20(3). It is said that inasmuch as the petitioners will be compelled to answer questions put to them by the Commission and also to disclose documents with regard to which a requisition is made by the Commission, they will be compelled to be witnesses against themselves and thereby be deprived of the protection afforded to them by Article 20(3). Interesting questions arise on this aspect of the matter. The question will have to be considered whether the petitioners are accused of any offence and also whether Article 20(5) has any application in view of Section 6 of the Act by which no statement made by a person in the course of giving evidence before the Commission shall subject him to or be used against him in any civil or criminal proceeding. But, in our opinion the decision of this question is premature. It would be for the petitioners at the proper time to claim the protection of Article 20(3), and if according to them the protection is improperly denied, they could come to Court for the assertion of their right. It has been held in American cases that the right to investigate which a Legislature possesses is subject to

the constitutional protection given to witnesses, and we are sure that the Commission in exercising its power will not overlook the provisions of Article 20(3).

25. There is one minor matter which remains to be dealt with. It is urged that inasmuch as the original notification did not fix a time limit as required by Section 3 of the Act, the notification was a nullity and the subsequent fixing of the time could not validate the notification. Now, when we look at Section 8, the condition precedent to the appointment of the Commission is that the Government should form an opinion that it is necessary so to do, and the section lays down for what purpose the Commission has to be appointed and is making an inquiry into any definite matter of public importance, and then it goes on to say that it shall perform such functions and within such time as may be specified in the notification. In the first place, we do not find any language of obligation with regard to the fixing of time. If a time has to be fixed it must be mentioned in the notification, but if no time is fixed then Section 7 provides that Government may, if it is of opinion that the continued existence of a Commission is unnecessary, by notification in the Official Gazette, declare that the Commission shall cease to exist from such date as may be specified in this behalf in such notification. But even assuming that it is obligatory upon the Government to specify the time within which the Commission must perform its functions, this is a matter of procedure and not of substance. Failure to specify the time is a mere irregularity which can be cured at any time. It is difficult to accept the view that this irregularity vitiates the whole notification and renders it a nullity.

26. The challenge, therefore, made to the notification must fail except to the extent indicated in the judgment. The notification is legal and valid except the last part of clause (10) into which the Commission has to inquire beginning with the words "and the action" and ending with the words "in future cases."

27. There will be an order on the Commission not to proceed with the inquiry to the extent that it relates to the last part of clause (10).

28. The petitioner to pay three-fourths of the taxed costs on a long cause scale, two counsel certified.

29. Leave to appeal to the Supreme Court under Article 133(7) and Article 183(2)(e) on the petitioners undertaking to file a proper petition within a fortnight. If petition filed, costs of the petition to be costs in the appeal before the Supreme Court.