(2010) 09 DEL CK 0385

Delhi High Court

Case No: Writ Petition (C) No. 9783 of 2006

Andaleeb Sehgal	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision: Sept. 28, 2010

Acts Referred:

- Central Sales Tax Act, 1956 - Section 3, 4, 5(1), 5(3)
- Civil Procedure Code, 1908 (CPC) - Section 31(1), 34
- Commissions of Inquiry Act, 1952 - Section 10, 10(7), 10A, 11, 27
- Constitution of India, 1950 - Article 14, 21, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 357(4)
- Finance Act, 1940 - Section 58(2)
- Hindu Succession Act, 1956 - Section 7
- Penal Code, 1860 (IPC) - Section 193, 228
- State Financial Corporations Act, 1951 - Section 31(1), 32(8)

Citation: AIR 2011 Delhi 29 : (2010) 173 DLT 296 : (2010) 119 DRJ 404 : (2011) 6 RCR(Civil) 1456

Hon'ble Judges: Dipak Misra, C.J; Manmohan, J; A.K. Sikri, J

Bench: Full Bench

Advocate: Rajive Sawhney and Vineet Jhanji, for the Appellant; C.S.Vaidyanathan and Dalip Mehra, for R-1, for the Respondent

Judgement

Dipak Misra, C.J.

The petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issue of a writ of certiorari for quashment of the notifications dated 11.11.2005 issued by the respondent No. 1, Union of India, vide Annexures 3 and 4 to the writ petition and further to lancet the rule framed on 20.1.2006 by the respondent No. 2, the same being unconstitutional. A further prayer was made for restraining the respondent No. 2 from publishing any finding

against the petitioner, the same being violative of Article 14 of the Constitution of India and Section 8B of the Commission of Inquiry Act, 1952 (for brevity "the Act").

2. A Division Bench hearing the matter had formulated the following three questions for consideration:

(i) Is the Constitution of a fact finding inquiry commission/authority legally permissible de-hors the provisions of the Commission of Inquiry Act, 1952?

(ii) Should resort to Section 11 of the Commission of Inquiry Act, 1952, necessarily result in the application of Sections 8B and 8C of the said Act to the proceedings before the Inquiry Authority/Commission?

(iii) Is the right to demand copies of the documents and affidavits, the right to be represented by a legal practitioner and the right to cross-examine the witnesses examined by the Commission available to a noticee independent of Section 8B and 8C of the Act aforementioned before an Inquiry Authority/Commission established otherwise than under the provisions of the said Act?

3. As far as the question No. (i) is concerned, the Division Bench, after hearing the learned Counsel for the parties and placing reliance on P.R. Nayak Vs. Union of India and Others, and Brahma Nand Gupta Vs. Delhi Administration and Others, concurred with the legal position stated in the said decisions and eventually did not find any merit in the contention raised by Mr. Sawhney, learned Counsel appearing for the writ petitioner. As far as the questions No. (ii) and (iii) are concerned, the Division Bench addressed to certain aspects pertaining to questions No. (ii) and (iii) and referred to the decisions in State of Bihar Vs. Lal Krishna Advani and Others, , Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, and Article 21 of the Constitution of India and thereafter held thus:

Need the persons whose conduct is being enquired into or those likely to be affected, wait till the commission concludes its proceedings and then challenge the findings on the ground that the same are violative of the principles of natural justice?, are matters that need to be examined and authoritatively answered. This can in our view be best done by a full bench of this Court keeping in view the importance of the questions that fall for determination.

4. Because of the aforesaid, a Full Bench has been constituted and the matter has been placed before us.

5. To appreciate the controversy from a proper perspective, it is necessary to refer to certain facts in brief. On 11.11.2005, the Government of India through the Ministry of Finance constituted an Authority named as "Justice R.S. Pathak Inquiry Commission" to go to the root of certain matters of definite public importance as set out in the terms of reference specified in the said Resolution. The Terms of Reference of the Inquiry Authority were stipulated as follows:

(1) To inquire into the sources of information, materials and documents that were available with the Independent Inquiry Committee (appointed by the Secretary General of the United Nations to investigate the administration of the UN Oil-For-Food Programme) with reference to the Report (including the Tables) of the said Committee pertaining to contracts bearing number M/9/54 and number M/10/57 and to give its opinion on the authenticity and reliability of the said sources, materials and documents, and whether, in its opinion, the purported transactions in oil are genuine or not.

(2) To inquire into the aforesaid information, materials and documents, and any other material or evidence that may be obtained by the Inquiry Authority, and to give its opinion whether the references to Indian entities and individuals pertaining to contracts bearing number M/9/54 and number M/10/57 are justified or not.

(3) To inquire into the question whether any Indian entity or individual received any money or other consideration from, or paid any money or other consideration to, any Government, agency, company, firm or individual in connection with the purported transactions in oil under the United Nations Oil-For-Food Programme pertaining to contracts bearing numbers M/9/54 and number M/10/57.

(4) To inquire into any other aspect or matter relevant to the Inquiry pertaining to contracts bearing number M/9/54 and number M/10/57.

(5) To make any recommendations or suggestions that the Inquiry Authority may consider necessary or proper.

6. As is evident, the Commission issued a notice to M/s Hamdaan Exports of which the present petitioner is a partner as it thought that he had the information on such points or matters which may be useful for, or relevant to, the subject of the inquiry. Be it noted, prior to the same, the Commission had framed a set of guidelines/order called Justice R.S. Pathak Inquiry Authority (Regulation of Procedure) Order, 2006 and the petitioner was required to ensure compliance with the said order. It is worth noting that after setting up the one-man Commission, the Central Government issued a notification on 11.11.2005. It is necessary to reproduce the contents of the said notification:

Ministry of Finance

(Department of Revenue)

Notification

New Delhi, the 11th November, 2005

S.O.1593(E). - Whereas in pursuance of the Resolution of Government of India in the Ministry of Finance (Department of Revenue) Number 8/35/2005-E.S., dated the 11th November, 2005, an Authority named as the Justice R.S. Pathak Inquiry Authority has been set up to go into the root of the certain matters of definite public

importance as set out in the terms of reference specified in the said Resolution;

And whereas the Central Government is of the opinion that the provisions of the Commissions of Inquiry Act, 1952 (60 of 1952) specified in the Annexure to this notification should be made applicable to the said Authority.

Now, therefore, in exercise of powers conferred u/s 11 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby directs that the provisions of the said Act specified in the Annexure to this notification shall apply to the said Authority.

Annexure

The Commission of Inquiry Act, 1952 (60 of 1952)

Serial Number	Provision of the Act
(1)	(2)
1.	Sub-section (4) of Section 3
2.	Section 4
3.	Sub-section (2) of Section 5
4.	Sub-section (3) of Section 5
5.	Sub-section (4) of Section 5
6.	Sub-section (5) of Section 5
7.	Section 5A
8.	Section 6
9.	Section 9
10.	Section 10
11.	Section 10A

[F. No. 8/35/2005-E.S.]

Rakesh Singh, Jt. Secy.

7. As set forth, the respondent No. 2 issued notice to the petitioner u/s 5(2) of the Act directing the petitioner and his firm to furnish a statement of facts alongwith documents within ten days from the receipt of the notice. The petitioner filed an application stating therein that he has neither been allowed any inspection nor has been provided with the copies of the documents which are in possession of the Enforcement Directorate and, hence, is not in a position to make a complete and full statement. He also made a prayer to allow him a personal hearing to make submission through his counsel. No reply was received by the petitioner but a further notice was issued on 19.4.2006 directing to file his statement of facts within ten days failing which it was mentioned that penal consequences would follow. The petitioner through his counsel filed another application for extension of time to file the statement of facts. On 3.5.2006, the respondent No. 2 sent a reply stating that

the filing of his statement of facts through an advocate was not permitted under the rules of Procedure; however, extension of seven days was granted for filing of his personal statement. On 9.5.2006, the respondent No. 2 issued a notice requiring the petitioner to appear in person alone alongwith all documents either in original or copies thereof which are in his possession. The petitioner submitted before the respondent No. 2 that since the enquiry which was going to be conducted in respect of the affairs of the petitioner was likely to affect his reputation by any adverse comments and findings, he must be granted an opportunity of hearing as he had the statutory right under Sections 8B and 8C of the Act. As pleaded, the petitioner filed an affidavit before the Commission and appeared before the respondent No. 2 wherein he was confronted with the documents.

8. We have only enumerated the facts to appreciate the question No. 3 that has been referred to the larger Bench and not for any other purpose for eventually after the reference is answered, the matter has to be placed before the Division Bench for adjudication in accordance with law.

9. The crux of the matter is whether the petitioner has any right to be represented by a legal practitioner and to cross-examine the witnesses independent of Sections 8B and 8C of the Act. In this context, we may refer to Sections 8B and 8C of the Act:

8B. Persons likely to be prejudicially affected to be heard. - If, at any stage of the inquiry, the Commission,

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of opinion that the reputation of any person is likely to be prejudicially affect by the inquiry,

the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

8C. Right of cross-examination and representation by legal practitioner. - The appropriate Government, every person referred to in Section 8B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission,

(a) may cross-examine a witness other than a witness produced by it or him;

(b) may address the Commission; and

(c) may be represented before the Commission by a legal practitioner or, with the permission of the Commission, by any other person.

10. The notification issued by the Central Government does not mention/include the applicability of Sections 8B and 8C of the Act to the Authority in question. Once the

said provisions are not applied to an Authority, the said provisions indubitably stand excluded.

11. The first question that arises for consideration is whether resort to Section 11 of the Act necessarily results in the application of Sections 8B and 8C of the Act to the proceedings before the Inquiry Authority/Commission. To appreciate the issue raised, it is condign to refer to Section 11 of the Act which reads as under:

11. Act to apply to other inquiring authorities in certain cases - Where any authority (by whatever name called), other than a Commission appointed u/s 3, has been or is set up under any resolution or order of the appropriate Government for the purpose of making an inquiry into any definite matter of public importance and that Government is of opinion that all or any of the provisions of this Act should be made applicable to that authority, that Government may, subject to the prohibition contained in the proviso to Sub-section (1) of Section 3, by notification in the Official Gazette, direct that the said provisions of this Act shall apply to that authority, and on the issue of such a notification that authority shall be deemed to be a Commission appointed u/s 3 for the purposes of this Act.

[Emphasis added]

12. The submission of the learned Counsel for the petitioner is that once the Government issues the notification in the Official Gazette, the authority is deemed to be a Commission appointed u/s 3 for the purposes of the Act and if Section 3 is read in proper perspective, it would become a Commission for all purposes and would have the power under Sections 8B and 8C of the Act, Section 3 of the Act deals with the appointment of a Commission. As there is a reference to the proviso of Sub-section (1) of Section 3, it is thought apt to reproduce Sub-section (1) of Section 3 in entirety. It reads as under:

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.

13. The question that emerges for consideration is whether the Authority (by whatever name called) other than a Commission appointed u/s 3 becomes a deemed Commission on the issue of a notification and would all other provisions under the Act get attracted in the case of a Commission appointed u/s 3 for the purposes of the Act despite the issue of a notification or which of the provisions would be applicable. To appreciate the issue, it is apposite to understand the concept ''shall be deemed to be a Commission'' in proper perspective. The word ''deemed'' has its own signification. In this context, we may refer with profit to the observations made by Lord Justice James in Ex Parte Salton, In re, Levy, 1881 (17) Ch D 746 which is follows:

When a statute enacts that something shall be deemed to have been done, which, in fact and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.

Lord Asquith, in East end Dwellings Co. Ltd. v. Finsbury Borough Council 1952 AC 109, had expressed his opinion as follows:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and instances, which, if the putative state of affairs had in fact existed, must inevitably have followed from or accompanied it.... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit or imagine to boggle when it comes to the inevitable corollaries of that state of affairs.

14. In The Bengal Immunity Company Limited Vs. The State of Bihar and Others, the majority in the Constitution Bench have opined that legal fictions are created only for some definite purpose. Their Lordships referred to the decision rendered in East End Dwellings Co. Ltd. v. Finsbury Borough Council 1952 AC 109 to highlight that a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field.

15. In Hira H. Advani Etc. Vs. State of Maharashtra, while dealing with a proceeding under the Customs Act, especially Sub-section (4) of Section 171-A wherein an enquiry by the custom authority is referred to, and the language employed therein, namely, "to be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code", their Lordships opined as follows:

It was argued that the Legislature might well have used the word "deemed" in Sub-section (4) of Section 171 not in the first of the above senses but in the second, if not the third. In our view the meaning to be attached to the word "deemed" must depend upon the context in which it is used.

16. In M.K. Balakrishnan Menon Vs. The Assistant Controller of Estate Duty-cum-Income Tax Officer, Ernakulam, while interpreting Section 7 of the Hindu Succession Act, 1956 wherein the words ''shall be deemed'' are used, their Lordships have relied thus:

9. ...The legal fiction also which has been introduced should only be limited to that purpose and there can be no justification for extending it....

17. In Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, the purpose of the word ''deemed'' occurring in Section 5(3) of the Central Sales Tax Act, 1956 came for consideration. The issue that emanated was whether a legal fiction has been created by use of the word ''deemed''. Their Lordships noticed that the same word "deemed" has been used by the legislature in Section 5(1) and Sections 3 and 4 of Chapter II of the Central Sales Tax Act and opined that no legal fiction has been created by the use of the word ''deemed'' in Section 5(3) of the Central Sales Tax Act. It is fruitful to reproduce what has been exposited by their Lordships:

11. ...It is true that the word "deemed" has been used in S.5(3) but the same word has been used not merely in S.5(1) but also in the other two Sections 3 and 4 of Chapter II of the Central Sales Tax Act which has the heading "Formulations of Principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of export or import", the heading of Chapter II on the face of it suggests that what is done under Ss. 3, 4 and 5 including sub-s. (3) is formulation of principles. Secondly, the word "deemed" is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision. In St. Aubyn and Ors. v. Attorney General 1952 A.C. 15 at p.53 Lord Radcliffe observed thus:

The word ''deemed'' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.

After making these observations the learned Law Lord went on to hold that it was in the last of the three ways (indicated in the observations) that the deeming provision was made in Section 58(2) of the Finance Act, 1940, which came for interpretation before the House of Lords. Similarly in Words and Phrases, Permanent Edition, Vol. 11A at page 181 it is explained that the word "deemed" is also used to mean "regarded as being"; it is equivalent to "shall be taken to be" (at page 185). In our view when Sub-section (3) of Section 5 uses the word "deemed" and says that the penultimate sale "shall also be deemed to be in the course of export" what is intended to be conveyed is that the penultimate sale shall also be regarded as being in the course of such export. In other words, no legal fiction is created....

[Underlining is ours]

18. In Maganlal Vs. Jaiswal Industries, Neemach and Others, while dealing with the fiction created under the State Financial Corporations Act, 1951 under Sections 31(1) and 32(8) making the order for sale a decree in a suit wherein the Financial Corporation was a decree-holder and the debtor a judgment-debtor, their Lordships opined that the same is not a decree for the purposes of applying Section 34 of the CPC because the legal fiction cannot be extended for treating an application u/s 31(1) as a plaint for payment of Court fee. In this regard, we think it apposite to reproduce what their Lordships have stated in the said decision:

29. ...Of course, in view of the limited scope of legal fiction as indicated above the provisions in the Code shall be applicable to an order of sale under the Act only with regard to execution of that order as if it was a decree in a suit and the Financial Corporation was a decree holder and the debtor a judgment-debtor and this legal fiction will not be capable of being extended so as to treat an order of sale passed under the Act to be a decree in a suit for any other purpose for instance applying Section 34 of the Code as was sought to be done in the case of Everest Industrial Corporation and Others Vs. Gujarat State Financial Corporation, nor could it be extended for treating the application made u/s 31(1) of the Act as a plaint for purposes of payment of court fee as was sought to be done in the case of Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others,

19. In State of Tamil Nadu Vs. M/s. Arooran Sugars Ltd., a Constitution Bench, while dealing with the deeming provision in a statute, opined that the role of a provision in a statute creating legal fiction is well settled. Their Lordships referred to the decisions in The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., , J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India (UOI) and Ors, , M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, and Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others, and came to hold that when a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the Court has to examine and ascertain as to for what purpose and between which persons such a statutory fiction

is to be resorted to and thereafter the courts have to give full effect to such a statutory fiction and it has to be carried to its logical conclusion.

20. In State of Maharashtra Vs. Laljit Rajshi Shah and Others, , it has been held as follows:

6. ...It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created....

[Emphasis supplied]

21. From the aforesaid pronouncements, the principle that can be culled out is that it is the bounden duty of the court to ascertain for what purpose the legal fiction has been created. It is also the duty of the court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term ''deemed'' has to be read in its context and further the fullest logical purpose and import are to be understood. It is because in modern legislation, the term ''deemed'' has been used for manifold purposes. The object of the legislature has to be kept in mind. On a scanning of the language employed in Section 11 of the Act, it is clear as day that once the notification comes into existence in respect of an Authority, it becomes a Commission u/s 3 for the purposes of the Act because of the use of the term ''deemed''. At the same time, the government has been conferred the power, a significant and a pregnant one, to form an opinion whether all or any of the provisions of the Act should be made applicable to that Authority and direct that only those provisions of the Act shall be applied to that Authority. To elaborate, the appropriate government has been bestowed with the power to exclude the applicability of certain provisions of the Act while appointing an Authority other than a Commission u/s 3 of the Act and at that point of time it can exclude certain provisions not to be made applicable. Thus, though the authority becomes a deemed Commission appointed u/s 3 for the purposes of the Act, it has to be read in the context keeping in view the intendment of the legislature. It has to be construed that the term ''deemed'' does not clothe the said authority, to be a Commission under the Act which has all the powers as the competent government has the power/authority to exercise the exclusion for certain provisions while issuing a notification.

22. In this context, we may also profitably state that the language employed in Section 11 has to be read in a holistic and purposeful manner. The court has a sacrosanct duty to understand the intention of the legislature while interpreting a provision. In Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and

Others, the Apex Court has expressed the view as follows:

The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used in Rule 40. If there is none, it would mean the language used speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act.

23. In Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, their Lordships have ruled thus:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place....

24. While keeping in view the aforesaid principle when the anatomy of Section 11 is scanned, it becomes vivid that the competent government has been empowered subject to the prohibition contained in the proviso to Sub-section (1) of Section 3 to direct that all or any of the provisions of the Act should be made applicable to the Authority. The said words as employed by the legislature have to be given its effective meaning.

25. Quite apart from that the said words precede the terms "shall be deemed to be a commission appointed u/s 3 for the purposes of this Act". In Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, a three-Judge Bench of the Apex Court

was considering an amending provision which was incorporated in Calcutta Thika Tenancy Act, 1949. A proviso was added to Sub-section (1) of Sub-section (2) of the said Act which provided that the provisions of the Calcutta the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place...." Thika Tenancy Act, 1949, as amended by this Act, shall, subject to the provisions of Section 9, also apply and be deemed to have always applied to all suits, appeals and proceedings pending before any Court, or before the Controller, or before a person deciding an appeal u/s 27 of the Act on the date of the commencement of the Act. A contention was advanced that "as amended by this Act" qualifies the word or term "provisions". Their Lordships posed the question whether the tenant who had applied for relief u/s 28 when that Section was in force would be entitled to have the application disposed of in accordance with the provision of that Section though it remained undisposed of on the date the Amendment Act came into force. In that context, their Lordships referred to the principles of statutory interpretation and opined thus:

8. The principles that have to be applied for interpretation of statutory provisions of this nature are well established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words, or necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary, even by

modification of the language used.

26. After so stating, the Apex Court took note of the submission that if the word "amended" is interpreted to include omissions, it would become meaningless because it makes no sense to say that a provision which has been omitted shall apply. After noting the submission, their Lordships opined thus:

10. We are unable to see how it is possible, unless rules of grammar are totally disregarded to read the words "as amended by this Act" as to qualify the word "provisions". If ordinary grammatical rules are applied there is no escape from the conclusion that the adjectival phrase "as amended by this Act" qualifies the proximate substantive, viz., the Calcutta Thika Tenancy Act, 1949. There is no escape from the conclusion therefore that what the Legislature was saying by this was nothing more or less than that the provisions of the amended Thika Tenancy Act shall apply.

27. In this regard, it is apt to refer to the decision in The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara, wherein it has been held as follows:

The ordinary rule of grammar on which a construction is based cannot be treated as an invariable rule which must always and in every case be accepted without regard to the context. If the context definitely suggests that the relevant rule of grammar is inapplicable, then the requirement of the context must prevail over the rule of grammar.

[Quoted from the placitum]

28. We have referred to the aforesaid decisions only to appreciate that rule of last antecedent, unless the context otherwise suggests, should not be ignored. In the case at hand, the phrases used in the Section has to be given due weightage.

29. In view of the aforesaid analysis, we have no scintilla of doubt that when resort is taken to Section 11 of the Act, it does not necessarily result in the application of Sections 8B and 8C of the Act to the proceedings before the enquiry authority/commission when the power of exclusion or non-inclusion has been specifically exercised by the competent government.

30. The next question that requires to be dwelled upon is as to whether any right to demand to be represented by a legal practitioner and to cross-examine the witnesses examined by the Commission is available to a noticee independent of Sections 8B and 8C of the Act before an Inquiry Authority. There can be no trace of doubt that Sections 8B and 8C fundamentally pertain to the applicability of the rules of natural justice. By virtue of the notification issued u/s 11, the said provisions have not been made applicable to the Authority/Commission. Thus, there is a deliberate exclusion. The question that emanates for consideration is when there is an exclusion of this nature, whether the doctrine of audi alteram partem would get

attracted. In this regard, we think it seemly to notice few citations in the field.

31. In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, the Apex Court, while posing the question as to how far natural justice is an essential element of ''procedure established by law'', has held thus:

...There are certain well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by S.A. de Smith in Judicial Review of Administrative Action, 2nd ed., at pages 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair play in administrative action. The word ''exception'' is really a misnomer because in these exclusionary cases, the audi alteram partem rule is held inapplicable not by way of an exception to "fair play in action", but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law ''lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation''. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the Court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk [1949] 1 All E.R 109 that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.

In the said case, Kailasm, J, while dealing with the concept of applicability of natural justice, referred to the decision in Union of India (UOI) Vs. Col. J.N. Sinha and

Another, and held as follows:

...Rules of natural justice cannot be equated with the fundamental rights. As held by the Supreme Court in Union of India v. J.N. Sinha (1970) I SCR 791, that "Rules of natural justice are not embodied rules nor can they be elevated to the position of Fundamental Rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the courts should do so. But if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice." So also the right to be heard cannot be presumed when in the circumstances of the case, there is paramount need for secrecy or when a decision will have to be taken in emergency or when promptness of action is called for where delay would defeat the very purpose or where it is expected that the person affected would take an obstructive attitude. To a limited extent it may be necessary to revoke or to impound a passport without notice if there is real apprehension that the holder of the passport may leave the country if he becomes aware of any intention on the part of the passport authority or the Government to revoke or impound the passport. But that by itself would not justify denial of an opportunity to the holder of the passport to state his case before a final order is passed. It cannot be disputed that the legislature has not by express provision excluded the right to be heard....

32. In Swadeshi Cotton Mills Vs. Union of India (UOI), , the majority speaking through Sarkaria, J. adverted to the concept of basic facets of natural justice, the twin principles, namely, audi alteram partem and nemo judex in re sua, the decisions rendered in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and eventually held thus:

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (Per Hegde, J. in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (See Union of India (UOI) Vs. Col. J.N. Sinha and Another,

33. The next general aspect to be considered is : Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by express

language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors : such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature....

[Emphasis added]

33. In Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, a three-Judge Bench of the Apex Court has held thus:

15. ...We do not think that it is permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the Court.

34. In Union of India and Another Vs. Tulsiram Patel and Others, the Apex Court has expressed thus:

100. In Swadeshi Cotton Mills Vs. Union of India (UOI), Chinnappa Reddy, J., in his dissenting judgment summarized the position in law on this point as follows (at page 591): (SCC p.712, para 106)

The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Binapani, Kraipak, Mohinder Singh Gill, Maneka Gandhi etc. etc. They are now considered so fundamental as to be "implicit in the concept of ordered liberty" and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced.

(Emphasis supplied.)

101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. J. Mohapatra and Co. and Another Vs. State of Orissa and Another, So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an

opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi''s case at page 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a Constitutional provision has a far greater and all-pervading sanctity than a statutory provision....

[Underlining is ours]

35. In S.N. Mukherjee Vs. Union of India, the Constitution Bench, while dealing with the applicability of the principles of natural justice, has opined thus:

39. ...The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that affect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

[Emphasis supplied]

36. In Union of India and another Vs. W.N. Chadha, their Lordships, while adverting to the issue of applicability of the doctrine of natural justice, have ruled thus:

80. The rule of audi alteram partem is a rule of justice and its application is excluded where the rule will itself lead to injustice. In S.A. Smith''s Judicial Review of Administrative Action, (4th Edn.) at page 184, it is stated that in administrative law, a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication in the presence of some factors, singly or in combination with another. Those special factors are mentioned under items (1) to (10) under the heading "Exclusion of the audi alteram partem rule".

81. Thus, there is exclusion of the application of audi alteram partem rule to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case. This rule cannot be applied to defeat the ends of justice or to make the law "lifeless, absurd, stultifying and self-defeating or plainly contrary to the common sense of the situation" and this rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands.

82. Bhagwati, J. (as the learned Chief Justice then was) in Maneka Gandhi speaking for himself, Untawalia and Murtaza Fazal Ali, JJ. has stated thus: (SCC p. 290, para 14)

...Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-y-Gest, from ''fair play in action'', it may equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion.

83. Thus, it is seen from the decision in Maneka Gandhi that there are certain exceptional circumstances and situations whereunder the application of the rule of audi alteram partem is not attracted.

37. After so stating, their Lordships referred to a passage from Paul Jackson in Natural Justice and various other decisions and opined as follows:

89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report u/s 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognize. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.

38. In D.K. Yadav Vs. J.M.A. Industries Ltd., the Apex Court has held as follows:

7. ...Particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies.

39. In Dr Rash Lal Yadav Vs. State of Bihar and Others, the Apex Court, after referring to the decisions in A.K. Kraipak (supra), Dr. Bina Pani Dei (supra), J. N. Sinha (supra), Swadeshi Cotton Mills (supra) and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , held as follows:

9. What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences. However, in this case, the High Court has, having regard to the legislative history, concluded that the deliberate omission of the proviso that existed in Sub-section (7) of Section 10 of the Ordinance (1980) while re-enacting the said sub-section in the Act, unmistakably reveals the legislature''s intendment to exclude the rule of giving an opportunity to be heard before the exercise of power of removal. The legislative history leaves nothing to doubt that the legislature did not expect the State Government to seek the incumbent''s explanation before exercising the power of removal under the said provision. We are in complete agreement with the High Court''s view in this behalf.

40. In Mangilal Vs. State of Madhya Pradesh, while dealing with the principle of applicability of natural justice in awarding compensation u/s 357(4) of the Code of Criminal Procedure, 1973, their Lordships have observed thus:

10. ...It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment....

41. The learned Counsel for the petitioner has submitted that when his reputation is likely to be affected, the doctrine of audi alteram partem has to be made applicable, otherwise he would be condemned unheard. It is urged by him that Article 21 of the Constitution of India in its expanse includes reputation. In this regard, he has drawn inspiration from the decision in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, The learned Counsel has also commended us to the decision in Lal Krishna Advani (supra) wherein it has been held thus:

8. It may be noticed that the amendment was brought about, about 20 years after passing of the main Act itself. The experience during past two decades must have made the legislature realize that it would be necessary to notice a person whose conduct the Commission considers necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially affected by the inquiry. It is further provides that such a person would have a reasonable opportunity of being

heard and to adduce evidence in his defence. Thus the principles of natural justice were got inducted in the shape of a statutory provision. It is thus incumbent upon the Commission to give an opportunity to a person, before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Needless to emphasise that failure to comply with principles of natural justice renders the action non est as well as the consequences thereof.

42. To buttress the submission that the violation of the rules of natural justice in any sphere would destroy the marrow of justice dispensation system, he has placed reliance upon the decisions rendered in A.K. Kraipak (supra), Mohinder Singh Gill (supra), Dr. Bina Pani Dei (supra), State of Kerala Vs. K.T. Shaduli Yusuff etc., S.L. Kapoor Vs. Jagmohan and Others, and Canara Bank and Others Vs. Shri Debasis Das and Others, In Debasis Das (supra), the Apex Court, while dealing with the concept of natural justice, has held thus:

20. Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (1855) 2 Macq. 1, Lord Cranworth defined it as "universal justice". In James Dunber Smith v. Her Majesty the Queen (1877-78) 3 AC 614 (PC) Sir Robort P. Collier, speaking for the Judicial Committee of Privy Council, used the phrase "the requirements of substantial justice", while in Arthur John Spackman v. Plumstead District Board of Works (1885) 10 AC 229 (AC at p.240), the Earl of Selbourne, S.C. preferred the phrase "the substantial requirement of justice". In Vionet v. Barrett (1885) 55 LJRD 39 (LJRD at p.41), Lord Esher, M.R. defined natural justice as "the natural sense of what is right and wrong". While, however, deciding Hookings v. Smethwick Local Board of Health (1890) 24 QBD 712, Lord Esher, M.R. instead of using the definition given earlier by him in Vionet case (supra) chose to define natural justice as "fundamental justice". In Ridge v. Baldwin (1963) 1 WB 539 (QB at p.578), Harman L.J., in the Court of Appeal countered natural justice with "fair-play in action", a phrase favoured by Bhagawati, J. in Maneka Gandhi (supra). In H.K. (An infant) Re (1967) 2 QB 617 (QB at p.630), Lord Parker, C.J. preferred to describe natural justice as "a duty to act fairly". In Fairmount Investments Ltd. v. Secy. to State for Environment (1976) 1 WLR 1255 Lord Russell of Killowen somewhat picturesquely described natural justice as "a fair crack of the whip" while Geoffrey Lane, L.J. in R. v. Secy. of State for Home Affairs, exp Hosenball (1977) 1 WLR 766 preferred the homely phrase "common fairness".

21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" as

stated in Earl of Derby''s case (1605) 12 Co. Rep. 114 that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa quia non protest esse judex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur et altera par"'' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui a liquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [See Boswel''s case (1605) 6 Co.Rep. 48b, (Co Rep at p.52-a) or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

43. The learned Counsel has also placed heavy reliance on the decision in Vallimayil Ammal v. The Commission of Inquiry, Chidambaram [1968] ILR (Mad) 188. In the said case, the learned Single Judge, while interpreting Section 11 of the Commissions of Inquiry Act, 1952 with all the powers conferred by Sections 4, 5 and 8 of the Act for submitting the report with its findings, held that when the authority making a decision which might affect the rights of the parties was required to adopt a judicial approach even though the decision by itself might not take effect, the proceeding would be quasi-judicial. The principles of natural justice would be applicable also to authorities who are called upon to submit a report for further consideration by some other body. The learned single Judge further held that when the interest of a person is likely to be affected and when the reputation is likely to be affected, fair opportunity had to be granted.

44. On a studied scrutiny of the enunciation of law in the field, it is clear as crystal that the principles of natural justice are presumed to be attracted unless they are expressly excluded or its exclusion can be inferred or deduced by necessary implication. In the case at hand, Sections 8B and 8C were incorporated in the statute book in the year 1971. It has a flavour and fragrance of the applicability of the principles of natural justice or to put it differently, the principles of natural justice have been statutorily embodied. The submission of Mr. Vaidyanathan, learned senior counsel, is that when the statute introduces or specifically incorporates the principles of natural justice, it has the power and the authority to exclude the same and once the provisions are not made applicable by a specific notification, there can be no shadow of doubt that the principles of natural justice stand excluded.

Combating the said submission, it is proponed by Mr. Sawhney, learned senior counsel appearing for the petitioner, that if the decisions in Vallimayil Ammal (supra) and Lal Krishna Advani (supra) are properly appreciated, it would clearly convey that in such situations the doctrine of audi alteram partem cannot be excluded and the basic facets of natural justice would come into play despite the exclusion by Sections 8B and 8C of the Act.

45. The aforesaid submission of the learned Counsel for the petitioner does not impress us on two counts, namely, when a statutory provision has been introduced into the statute book including the doctrine of natural justice and there is an authority conferred on the competent government to apply certain provisions and the said provisions have deliberately not been included which amounts to its exclusion, the principles of natural justice which, in law, is excludable cannot be brought in by taking recourse to the factum of presumptive applicability. Quite apart from the above, we are disposed to think that when Sections 8B and 8C of the Act specifically provide for grant of reasonable opportunity of being heard and grant of permission for cross-examination and representation by the legal practitioner, in view of the exclusion of the said provisions, it is inconceivable to incorporate the same.

46. The issue No. 2 is also required to be tested in the obtaining factual backdrop. Mr. Vaidyanathan, learned senior counsel has submitted that the Authority or the Commission that has been constituted is basically a preliminary fact finding inquiry equivalent to investigation or a preliminary inquiry in a disciplinary proceeding. It is contended by him that the Commission is required to collect materials for ascertaining whether there is a prima facie case to proceed further in that regard. We find the said submission has substantial force inasmuch as on a studied scrutiny of the terms of the reference it is demonstrable that it is actually a fact finding or preliminary inquiry.

47. In view of our preceding analysis, we proceed to record our conclusions in seriatim:

(i) When an authority is constituted by the competent government and resort is taken to Section 11 of the Commissions of Inquiry Act, 1952, it does not necessarily result in the application of Sections 8B and 8C of the Act to the proceedings before the Inquiry Authority/Commission.

(ii) The legislature has the power to exclude the applicability of the principles of natural justice either expressly or impliedly and when Sections 8B and 8C of the Act have not been made applicable to the Inquiry Authority/Commission while issuing a notification u/s 11 of the Act, the doctrine of audi alteram partem stands excluded.

(iii) Once the applicability of Sections 8B and 8C of the Act have not been made applicable to the Inquiry Authority/Commission which actually tantamounts to exclusion of the said provisions, a noticee, especially in an inquiry of the present

nature which is a fact finding or preliminary inquiry, has no right to demand copies of the documents and affidavits or to be represented by legal practitioner or to cross-examine the witnesses examined by the Commission in the inquiry.

(iv) Whether the opinion formed by the Government for not applying Sections 8B and 8C of the Act to an Authority/Commission is justified or not can be questioned in a court of law on permissible grounds, namely, arbitrariness, unfairness, unreasonability, irrationality, etc.

48. The reference is answered accordingly. Matter be placed before the appropriate Division Bench.