NOTES & COMMENTS

COMMISSIONS OF ENQUIRY IN INDIA

INTRODUCTION

DEMAND FOR the appointment of commissions of enquiry by political parties and other members of the society has become a fashion of the day. The governments at the Centre as well as in the states have been appointing commissions of enquiry from time to time. We live in a society in which pursuit of the public good has meant that affairs of the individual citizen are being increasingly affected by the decisions of government departments. Many administrative and quasi-judicial functions exercised by the administration often require making of some preliminary enquiry before exercising that power. The need of such an enquiry is primarily to collect the views of different shades of people likely to be affected by the exercise of such administrative or quasi-judicial power by the authority concerned. Padfield describes this fact by saying "Efficient decision making involves, as first step (1) an enquiry to ascertain the facts of a situation; (2) reasonable thought and judgment; and (3) the actual decision."[1] The importance and need of setting up of commissions of enquiry was emphasized by Franks Committee of England[2] in the following words:

> On the one hand there are ministers and other administrative authorities enjoined by legislation to carry out certain duties. On the other hand there are the rights and feelings of individual citizens who find their possessions or plans interfered with by the administration. There is also the public interest which requires both that ministers should not be frustrated in carrying out their duties and also that their decisions should be subject to effective checks or controls, and these can no longer be applied by Parliament in the general run of cases.[3]

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1. Padfield, C.F., *Elements of Public Law* 264 (1968).

2. A Committee, under the Chairmanship of Sir Oliver Frank was appointed by the Lord Chancellor in 1955 to consider and make recommendations on: (*a*) the constitution and working of tribunals other than the ordinary courts of law, constituted under any Act of Parliament by a Minister of the Crown or for the purposes of a Minister's functions, (*b*) The working of such administrative procedures as include the holding of an enquiry or hearing by or on behalf of a Minister on an appeal or as the result of objections or representations, and in particular the procedure for the compulsory purchase of land.

3. The Committee's report as published on July, 18, 1957 (1957), Comnd. 218.

In addition to collection of views a commission of enquiry serves the purpose of gathering necessary data or facts relating to a particular subject of public importance. The purpose of setting up a commission of enquiry is also to make a full and complete investigation into the circumstances of various cases which involve matters of public importance so as to effectuate apt policies in the public interest. Wade[4] while describing the aims of setting up commissions of enquiry says "the whole object of these enquiries is to assuage the feelings of the citizen and to give his objections the fairest possible consideration."

The practice of appointment of commissions of enquiry is found in almost all countries. A number of jurists including Anson, Ridges and Mood Phillips hold the view that the method of investigation by way of a committee was originated in 1689. Keeton cites an instance of the appointment of a committee of inquiry in 1667 by the House of Commons, following the fall of Clarendon, to investigate how the King and his Ministers had spent taxes voted by Parliment.[5] In France and Italy, where there are special courts for administrative matters commissions of enquiry need not be utilized for making enquiries. In England Tribunals of Inquiry (Evidence) Act 1921[6] empowers governments to set up tribunals of inquiry.[7] Statutory inquiries are now so common in the United Kingdom that it is unusual to find a statute concerned with planning control or with the acquisition of land, or indeed with any important social service or scheme of control, which does not provide this machinery for one or more purposes. Other Commonwealth countries have also enacted statutes to set up commissions of inquiry.[8] In India such a commission can be appointed under the Commissions of Inquiry Act, 1952, the Industrial (Development and Regulation) Act 1951, The Tariff Commission Act and the Income-tax Investigation Commission Act.

CONSTITUTION OF COMMISSIONS

Prior to the enactment of Commissions of Inquiry Act, 1952 the governments used to set up committee and commissions by an executive order. The Act has been used to investigate different kinds of matters. The first inquiry which created lively interest among the people of India

4. Wade, H.W.R. *Administrative Law* Clarendon 199 (1907).

5. Keeton, George W., *Trial by Tribunal* 19 (1960).

6. 11 Geo. S.C. 7.

7. Since 1921 there have been fifteen such tribunals dealing with various matters, allegations of bribery of ministers and public servants, over the issue of licences, disclosure of secrets, the loss of a submarine during diving trials, corruption in municipal offices, complaints against the police, a spy at the admiralty.

8. Royal Commissions Act, 1922. of Australia. It has been the practice of the Commonwealth to enact special legislation empowering the setting up of Commissions of Inquiry in relation to specific matters and to incorporate the provisions of the General Act therein. Inquiries Act, 1927 of Canada, and Ceylon Commissions of Inquiry Act, 1948.

was that of Chagla Commission set up by the government of India to enquire whether funds of the Life Insurance Corporation of India had been properly utilized. This Act provides that if the government of India or the government of a state is of the opinion that it is necessary to appoint a commission of enquiry, it may, by a notification in the official gazette, announce setting up a commission for the purpose of making an enquiry into any definite matter of public importance within a prescribed period. The government concerned may take such a decision either on public demand or on the basis of a resolution adopted by the Lok Sabha or the legislative assembly of the state, as the case may be, requesting the government for the appoinment of such a commission. The government can also set up a commission of enquiry on its own initiative and without any demand from any quarter if it considers it necessary and in the interest of the people. It may be pointed out that when a resolution has been passed by the legislature concerned the appropriate government is bound to appoint a commission of enquiry. The Chagla Commission to investigate into the affairs of Mundhra House, the Tendolkar Commission to enquire into the affairs of Dalmia, the Vivian Bose Commission for the matters relating to Allenberry Co. and the Ayyangar Commission to inquire into the conduct of Bakshi Ghulam Mohammed, Ex-Prime Minister of Jammu and Kashmir, are some of the commissions which were appointed on the adoption of resolutions in this behalf. The government of Orissa appointed a commission headed by Justice H.A. Khanna of Delhi High Court to inquire into the conduct of Hare Krushna Mahtab on its own initiative and without any request from the legislative assembly. Similarly the government of India appointed an inquiry commission on 'Film Censorship' under the Chairmanship of Shri G.D. Khosla, former Chief Justice of the Punjab High Court.

In England a Commission of Inquiry can be appointed only when a resolution to this effect is passed by both the Houses of Parliament. Government themselves cannot take initiative in appointing a commission.

A commission may consist of one or more members and in the later case one of them is to be designated as its chairman. The general practice of the government of India and the state governments has been to appoint single-member commissions but it has been seen that in the recent past the government of India has abandoned this practice. The Dalmia Inquiry Commission consisted of more members than one. The commission to inquire into the affairs of the Council of Scientific and Industrial Research consisted of thirteen members headed by Shri A.K. Sarkar, former Chief Justice of India. A commission to examine and suggest legal and administrative measures for countering evasion and avoidence of direct taxes consisting of five members with the former Chief Justice of India, Shri, K. N. Wanchoo, at its head was recently appointed. The four members of the commission are experts on financial matters.

SCOPE

Since a commission of enquiry is merley to investigate and record its findings and recommendations, without having any power to enforce them, the enquiry or report cannot be looked upon as judicial enquiry in the sense of it being an exercise of judicial function properly so called. The statements made by any person before the commission are wholly inadmissible in evidence in any further proceeding, civil or criminal. Its report is purely recommendatory and not effective *proprio vigore*.[9] Its only function is to investigate facts and record its findings thereon and then to report to the government in order to enable it to make up its mind as to what legislative or administrative measures are to be adopted to eradicate the evil found out or to implement the beneficial objectives it has in view. The purpose of the enquiry can be two-fold. Firstly, to ascertain facts so as to enable the legislature to undertake legislation relating to matters of public importance and secondly, to make an administrative investigation into certain facts. A government can set up a commission of enquiry before taking any measures whether legislative or administrative to maintain the purity and integrity of the administration.

MATTERS OF PUBLIC IMPORTANCE

The words 'public importance' as used in the Act are very wide in amplitude and any matter which affects the interests of sufficiently large number of members of the society can be deemed to be a matter of public importance. In fact it will depend on the government to judge a particular problem in the existing climate whether it is of public importance or not. The appointment of a commission of enquiry by the government of Jammu & Kashmir against Shri Bakshi Ghulam Mohammed for his acts as the Chief Minister of the state was challenged on the ground that since Bakshi Ghulam Mohammed did not hold office of chief minister at the time of the appointment of the enquiry commission his acts while in his office were not of public importance [10] The Court reiterated the view expressed by it earlier in the *Ram Krishna Dalmia* case, that the conduct of an individual may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance, urgently calling for a full enquiry. What is to be enquired into in any case are necessarily past acts and it is because they have already affected the public well-being or their effect might do so, that they become matters of public importance. It is irrelevant whether the person who committed those acts is still in power to be able to repeat them or not. The enquiry need not necessarily be into his capacity to do it again, what he has already done is sufficient to institute a commission of enquiry. Resignation from an office

9. *Ram Krishna Dalmia* v. *Justice Tendolkar*, A.I.R. 1958 S.C. 538, 547.
10. *State of Jammu and Kashmir* v. *Bakshi Ghulam Mohd.* A.I.R. 1967 S.C. 122.

could not change the character of the acts of a person who held a public office. The Supreme Court held the view that it was of public importance that public men failing in their duty should be called upon to face the consequences. It was certainly a matter of importance for the public that lapses on the part of ministers should be exposed. The cleanliness of public life in which the public should be vitally interested, must be a matter of public importance. In the *Bakshi* case a unique argument was advanced that the allegations against him were not matters of public importance because there was no public agitation over them. The Court did not accept this argument and observed that they did not agree that a matter could not be of public importance unless there was public agitation over it.

The question whether a commission of inquiry could be appointed against a minister, who is out of office, by a successor government, was raised before the Supreme Court in the *Krishna Ballabh Sahai* case[11] and the case of Biju Patnaik. In Sahai's case it was argued that the commission was set up due to political and personal rivalry between Shri Maha Maya Prasad Sinha and Shri Krishna Ballabh Sahai and as such the appointment of the commission was *ultra vires* and against the principles of a democratic and parliamentary type of government. It was further contended that setting up of a commission offended article 14 of the Constitution. The Supreme Court repelled these contentions and came to the conclusion that if a statutory authority exercised its power for the purpose authorised by law, its action cannot be regarded as *ultra vires* or without jurisdiction. The point of *malafides* on the part of the successor government was also turned down by the Court on the ground that it was difficult to distinguish, between an authorized and an unauthorized purpose in that case. It, however, laid down that the proper test to be applied in such cases is to see what is the dominant purposes for which the administrative power is exercised. If the administrative authority pursues two or more purposes of which only one is authorized and the other unauthorized, the legality of the administrative act would be determined by a reference to the dominant purpose. Regarding the object of the appointment of the commission of inquiry the Supreme Court, after reviewing various aspects of the facts mentioned in the affidavits filed by the parties, observed that the commission was not appointed merely due to political rivalry of the parties but was impelled by the desire to set up and maintain high standards of moral conduct in the political administration of the state.

Whether a matter is of public importance or not has to be decided essentially from its intrinsic nature. It is possible that the general public may not be aware of certain existing things relating to matters of public importance and they may not agitate over it. For example a section of the public may not agitate or request the government to enquire into and investigate the exact amount of mineral wealth available in the country. But there can be no doubt that assessment of mineral wealth is a matter of

11. *Krishna Ballabh Sahai* v. *Commission of Inquiry*, A.I.R. 1969 S.C. 258.

public importance and the government may set up a commission to assess the mineral wealth.

PROCEDURE

The central government and the state governments have been empowered to frame rules for the procedure to be adopted by the commissions of enqiry. The government of India have so far framed three rules.[12] Some states have also framed rules in this regard.

Section 8 of the 1952 Act, however, authorizes a commission of enquiry to regulate its own procedure and to decide whether it will hold its proceedings in private or in public.

The procedure of the commission of inquiry in England was settled as late as in 1948. Shri M.C. Chagla (the then Chief Justice of Bombay) in Mundhra's Commission of Inquiry determined the procedure as detailed below.[13]

> It will examine the witnesses who come before the Commission. The Attorney-General will then question them and supplement the evidence in any manner that he thinks proper. Counsels who are appearing for other interests will then have the right of examining these witnesses and I will finally put any other question which I may think necessary to the witnesses. It will be open to the Counsels appearing for different interests to call for any evidence they think proper and after all the evidence is offered Counsel may address me on the evidence.

A commission has all powers of a civil court in so far as the summons to the witnesses, production of documents, and receiving evidence are concerned.[14] The government can, however, vest other powers in the commission by a notification. The commission is not bound to follow the strict principles of evidence in its proceedings but it is its duty to see that the principles of natural justice are not violated. Rules 4 and 5 of Central Commission of Inquiry (Procedure) Rules are based on the principle of natural justice because they provide for reasonable opportunity to be given to a person before a decision is taken in the matter. It is necessary that the proceedings of the commission must win confidence of the people. It should be based on Lord Hewart's maxim "Justice should both be done and be manifestly seen to be done." The commission should act in such

12. (*i*) The Commissions of Inquiry (Assessors) Rules 1954 S.R.O. 1218, dated April 9, 1954.

(*ii*) Rules for the issue of service of Summons by a Commission of Inquiry S.R.O. 1676 dated July 26, 1955.

(*iii*) The Central Commission of Inquiry (Procedure) Rules, 1960 G.S.R. 531 dated May 7, 1960.

13. *Law Commission's Twentyfourth Report* 1962 11 (1962).

14. §§ 4 and 5 of Commissions of Inquiry Act, 1952.

a manner that the people should realize that the proceedings are not false and the purpose for setting up a commission is only to ascertain the views of the people.

Some people had suggested to the Government of India Law Commission to lay down clearly whether Indian Evidence Act applies to the proceedings before a commission of enquiry. The Commission quoted the following words of Keeton[15] and recommended that the same practice should be followed in India and there was no need of any statutory provision in this behalf.[16]

> In sifting the facts concerning the existence of rumours giving rise to the inquiry, all evidence is relevant and this part of the inquiry is simply fact finding. When the question of the involvement of a particular person in a particular transaction is under consideration, however, the Tribunal restricts itself to the facts admissible under the normal rule of evidence.

The proceedings of the commission should be open, fair and impartial. The openness requires the publicity of proceedings and knowledge of the essential reasoning underlying the decisions : fairness can be achieved by adopting a clear procedure which enables parties to know their rights, to present their case fully and to know the case which they have to meet and impartiality requires freedom to the commission from the influence, real and apparent, of the departments concerned, with the subject-matter of their decisions.

LEGAL STATUS

A commission of enquiry is not a court of law. The Supreme Court has observed that : [17]

> The Commission has no power of adjudication in the sense of passing an order which can be enforced *'proprio vigore'*. A clear distinction must, on the authorities, be drawn between a decision which, by itself has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, as the Commission, we are concerned with, is merely to investigate and record its findings, and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called.

15. *Keeton, George W., op. cit., supra,* note 5 at 18.
16. Law Commission, *op. cit., supra,* note 13 at 11.
17. *Ram Krishna Dalmia* v. *Justice S.R. Tendolkar and Others,* A.I.R. 1958 S.C. 538.

The members of a commission cannot claim immunities which are available to an officer presiding over a court of law. They are not immune from the contempt of any court of law. One of the grounds of attacking the findings of the enquiry commission against Biju Patnaik and others was that the setting up of the commission by the state government would amount to contempt of the High Court because the matters referred to by the government were pending before the High Court in another litigation. The Supreme Court[18], however, held that the inquiry and investigation by the commission do not amount to usurpation of the function of the courts of law beause the scope of the two are altogether different. To constitute contempt of court there must be involved some act done or writing published calculated to bring a court or a judge of a court into contempt or to lower his authority or something calculated to obstruct or interfere with the due course of justice in the lawful process of the courts. The commission of inquiry in the *Biju Patnaik* case had nothing to obstruct or interfere with the lawful powers of the court by acting *bona fide* and discharging statutory functions under the Commissions of Inquiry Act. This case made clear that a court of enquiry could be set up even if certain matters were pending in a court of law.

A commission of enquiry is not competent to punish anyone for the contempt of its proceedings or for violating its orders.[19] A member of judiciary, however, retains his status of presiding officer of a court of law while acting in his judicial capacity even if he is casually performing the duties of a member of a commission of enquiry also.[20] The commissions are temporary and are not whole time posts and their sittings are not even continuous. A judge appointed to head a commission of enquiry is not deprived of his status as a judge of the High Court. These observations were made by the Supreme Court when a judge of a High Court while acting as a commission of inquiry was also required to perform the duties of a vocation judge simultaneously.

SUGGESTIONS

It has been seen that the state governments often appoint commissions to enquire into the problems which are often of national importance but their circumference of activity is confined to state boundaries. For example a commission of enquiry can be appointed to enquire into the causes of communal riots in a particular area. Such riots occur in different parts of the country and it is possible that various state governments appoint Supreme Court judges as commissions of enquiry while others employ the services of High Court judges. Some appoint single-member commissions while others

18. *Jaganath* v. *State of Orissa*, A.I.R. 1969 S.C. 215.
19. *Allen Berry & Co.* v. *Vivian Bose*, A.I.R. 1960 Punj. 416.
20. *Alok Kumar* v. *S.N. Sharma*, A:I.R. 1968 S.C. 453.
21. *Id.* at 455.

prefer a set of members to constitute a commission. In order to avoid multiplicity of commissions and to have a uniform procedure, it appears necessary that there should be an organization to coordinate the activities of the commissions. In England on the recommendations of Frank's Commission Tribunals and Inquiries Act 1958 was enacted which enabled the establishment of a permanent body called a Council of Tribunals.

It may be suggested that suitable and necessary amendments may be made in the Commissions of Inquiry Act, 1952 for setting up a standing machinery to deal with the problems of enquiries as and when they arise. It may better be called Bureau of Commissions of Enquiry. This bureau should consist of three members—a retired judge of the Supreme Court as Chairman and two retired High Court judges as members. It should maintain a list of judges who are to be appointed as a member of the Commission of Enquiry either by the government of India or state governments. The procedure of the appointment of a commission should be laid down in such a way that whenever central government or state government desire to appoint a commission they should approach the bureau to nominate a judge for the purpose. The bureau should invariably nominate a judge who does not belong to the state where he has to make enquiries. If there be any need to have a man having local experience or knowledge then a local man possessing sufficiently high social position could be appointed as an adviser to the commission. If these measures are odopted the commissions of enquiry are bound to win more confidence of the people.

There has been a demand from certain quarters that instead of appointing retired judges as commissions of enquiry serving judges should be asked to take up this work. But if the serving judges are frequently required to make enquiries, regular work of the High Courts is bound to suffer resulting in arrears of pending cases. It would, therefore, be better that this matter be left to the proposed bureau to decide whether a retired judge or a serving judge is to take up an enquiry.

Another duty than can be assigned to the bureau is to coordinate the activities of various commissions. If two state governments are appointing their commissions to examine similar problems, the bureau can suggest for a single commission with an enlarged term of reference. This will be economical and speedy. The bureau can be assigned the task of getting the accepted recommendations implimented by the government concerned. It will have to maintain constant contacts with the government of India in this connection.

It may also be suggested here that instead of authorising central and state governments to frame rules for the procedure to be adopted by the commissions, the government of India should make a comprehensive set of rules applicable to all the commissions. Uniformity in the laws is the demand of the present Indian society.

It has been seen that the governments mostly do not publish the

reports of the commissions on the plea that it was not in the public interest. In this connection it is suggested that it may be left to the bureau to examine each report and advise the government concerned whether the report is to be published for perusal of the public. The final decision for publication should, however, rest with the government concerned. It has been suggested that every commission should prepare its report in two parts—the first dealing with the facts and the second may contain its findings and recommendations. They plead that first part of the report should invariably be published and it should be left to the discretion of the government to publish the second part of the report. It is submitted that there can be cases where even the publication of bare facts recorded by a commission may not be in the public interest and it may flare up certain undesirable feelings among the public.

There can be an occasion when a government after the receipt of a report may reach to the conclusion that certain questions had not been fully dealt with by the commission and it required reexamination. At present there is no provision in the Commissions of Inquiry Act to remand the report to the commission. In such circumstances a commission of enquiry should not be disbanded immediately after submitting its report, so that the government concerned may take a decision whether it is to be sent back for reconsideration as early as possible. To achieve these objectives necessary amendments in the Act will also have to be made.

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