Annexure A

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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

DATE : 28-09-2007

OA No. 166/2006.

Mr. R.B. Sreekumar, IPS _____ Petitioner(s)

Mr. G.S. Patel & Ms. Deepa Sreekumar. Advocate of the Petitioner(s)

Versus

Government of Gujarat & Ors _____ Respondent(s)

Mr. B.N. Doctor _____ Advocate of the Respondent(s)

CORAM :

Hon'ble Mr. Shankar Prasad : Member (A)
Hon'ble Mr. D. Sankaran Kutty : Member (J)

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Sachivalaya, Gandhinagar.

R.B. Sreekumar, IPS
(1971 Batch)
Additional Director General of Police
(Police Reforms)Gujarat State,
Gandhinagar,
G-6, Samarpan Flats, Gulbai Tekra,
Ellisbridge, Ahmedabad- 380006. ... Applicant.

(Advocate : Mr. G.S. Patel & Ms. Deepa Sreekumar)

VERSUS

1. Government of Gujarat,
Notice through the Chief Secretary,
New Sachivalaya, Block No.1,
Gandhinagar. Pin 382010.
(Gujarat State)

2. Chief Secretary,
Government of Gujarat
New Sachivalaya, Block No.1,
Gandhinagar. Pin 382010.
(Gujarat State)

3. Principal Secretary,
Department of Home,
Government of Gujarat,
New Sachivalaya, Block No.2,
Gandhinagar. Pin 382010.
(Gujarat State)

4. Director General of Police,
State of Gujarat,
'Police Bhavan,
Sector-18,
Gandhinaar. Pin 382018.
(Gujarat State) ... ... Respondents.

(Advocate : Mr. B.N. Doctor)

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O R D E R

O.A.166 of 2006

Date :28 /09/2007.

Per : Hon'ble Shri Shankar Prasad, Member (A)

Aggrieved by the issue of charge-sheet dated 06/09/2005, the applicant has preferred the present O.A. He is seeking following reliefs:

"10(A) Admit and allow the present application;

(B) Call for the service record and other relevant material leading to the issue of the impugned Memorandum / Order dated 6/9/2005 by the competent authority;

(C) For a declaration that the impugned Memo / Order, dated 6/9/2005 is barred by the provisions of Section 6 of the Commission of Inquiry Act, 1952 and also contrary to Rule 8 of the All India Services (Conduct) Rules.

(D) For a declaration that the impugned decision and order, dated 6/9/2005 vide Notification No. ENQ/252005/958/G of the respondents 1 to 4 proposing to hold an enquiry against the applicant and the imputation of misconduct and articles of charges annexed thereto is illegal, arbitrary, irrational, discriminatory, suffers from colourable power of authority, politically motivated, perverse, suffers from malafide, based on bias and prejudice, actuated out of sense of victimization and harassment and is therefore violative of Articles 14, 16, 21, 311 of the Constitution of India, and

(E) Quash and set aside the impugned decision and order dated 6/9/2005 vide Notification No. ENQ/252005/958/G of the respondents 1 to 4."

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2. While issuing notice on 01.05.06, the Tribunal had passed following order:

> "Heard Shri N.H. Seervai, learned counsel for the applicant. It is contended that the charge-sheet issued vide memorandum dated 6th September 2005, is hit by Section 6 of the Commission of Enquiry Act as the charges have been framed in respect of evidence given by the applicant before the Shah Nanavati Commission. He has also drawn our attention to Rule 8 of AIS (Conduct) Rules. He has also taken us through paragraphs 26, 29, 30, 34, 35, 37, 39, 40, 222, 229, 239, 244 & 245 of the judgment of Apex Court in the case of *Kehar Singh vs. State (Delhi Administration), 1988(3) SCC 609*. It is further stated that no Enquiry Officer has still been appointed. The chargesheet is accordingly being challenged on the ground of being contrary to law.
>
> 2. Issue notice to the respondents to file their counter/reply, returnable on 12/05/2006. By way of interim relief, it is directed that no further action shall be taken in the departmental enquiry proceedings till the next date.
>
> 3. Direct service to Respondent No.1 to 4 is permitted."

The interim relief was extended from time to time MA.367/06 was moved by the respondents for vacating the interim relief. The Tribunal in its order dated 26.03.07 observed that the pleadings are complete and that it would be better to decide the matter finally. The OA was also admitted and posted for final hearing on 10.05.07.

3(a) The facts lie in a narrow compass. The Government of Gujarat set up a Commission of Enquiry under the Commission of Enquiry Act

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consisting of Mr. Justice K.G. Shah retired Judge of High Court vide its notification GN/07/2002-COI/102002/797-D dated 06/03/2002(Annex.A/7). It had the following terms of reference:-

(1) To inquire into-

(a) The facts, circumstances and the course of events of the incidents that led to setting on fire of some coaches of the Sabarmati Express Train on 27/2/2002 near Godhra railway station,

(b) The facts, circumstances and course of events of the subsequent incidents of violence in the State in the aftermath of the Godhra incident and

(c) The adequacy of administrative measures taken to prevent and deal with the disturbances in Godhra and subsequent disturbances in the State,

(2) To ascertain as to whether the incident at Godhra was a pre planned and whether information was available with the agencies which could have been used to prevent the incident,

(3) To recommend suitable measures to prevent recurrence of such incidents in future."

(b) The said Commission was reconstituted in the public interest by converting it into a two member Commission headed by Mr. Justice G.T. Nanavati, former judge of the Supreme Court of India as chairperson and Mr. Justice K.G. Shah, former High Court Judge as a Member vide Notification GK/16/2004-COI/102002/797-A dated 20.07.04. The following terms of reference were also added:-

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"I. After clause (c) in sub-para(1) of para 2 following clauses (d) and (e) be added namely:-

"(d) Role and conduct of the then Chief Minister and/or any other Minister(s) in his Council of Ministers, Police Officers, other individuals and organizations in both the events referred to in clauses (a) and (b),

(e) Role and conduct of the then Chief Minster and/or Minister(s) in his Council of Ministers, Police Officers (i) in dealing with any political or no-political organization which may be found to have been involved in any of the events referred to hereinabove, (ii) in the matter of providing protection, relief and rehabilitation of the victims of communal riots (iii) in the matter of recommendations and directions given by National Human Rights Commission from time to time.""

4 (a). The applicant is an IPS officer in 1971 batch. He was repatriated from the Central Deputation in August 2000 having been granted deemed promotion in ADG rank w.e.f. April 1999. He was appointed as Additional Director General of Police, CID, Intelligence in the second week of April 2002. He continued as such till 17/09/2002 when he was transferred as Additional Director General of Police In-charge of Police Reforms. He continued as such till his superannuation on 28/02/2007.

(b) The applicant submitted his first affidavit to the Nanavati Commission on 15/07/2002. The said letter dated 15/07/2002 addressed to Secretary of the said Commission is marked 'SECRET' and reads as under:

To

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"As authorized by the Director General and Inspector General of Police, Gujarat State, Gandhinagar, the Affidavit relating to the area of responsibility of State Intelligence Bureau (SIB) is submitted herewith in six(6) copies.

2/- It is further stated that, the said Affidavit could not be submitted before 30th June, 2002, since SIB officers were engaged in sensitive functions relating to Lord Jagannath Rath Yatra scheduled on 12/7/2002.

3/- The enclosed Affidavit and other papers appended herewith have a direct relevance on the internal security of the Nation and so it is requested that these documents may kindly be treated as confidential and privileged documents."

A copy of the same has been marked to DG & IG (P) of Gujarat State, Gandhinagar also.

The then DG(P) appears to have requested the applicant and other officers to file a second affidavit with complete information on 16.09.04 & 21.09.04. This was evidently necessitated by the expansion of the Commission's Terms of reference on 20.07.02.

The applicant submitted his second affidavit to Shah Commission on 06/10/2004 with copies to Principal Secretary, Home Department, Government of Gujarat and D.G. & I.G. of Police, Gujarat State, Gandhinagar. The forwarding letter reads as under:-

"As instructed by the Director General and Inspector General of Police, Gujarat State, Gandhinagar, vide his Fax Message No.G-2/1927/TAPAS/PANCH/AFFIDAVIT/1690/2003, dated 18/9/2004, and subsequent Fax Message No.G-2/1927/TAPAS/PANCH/AFF/1711/2004, dated 21/9/2004, the

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Affidavit, relating to the area of responsibility of State Intelligence Bureau (SIB) relevant to the additional terms of reference of the Commission issued vide Notification by the Legal Department, Govt. of Gujarat, on 28th July, 2004, is submitted herewith in six copies."

Secret report dated 24.04.02 addressed to ACS with copy to DG & IG (P), Actionable point submitted to Shri K.P.S. Gill, Adviser to C.M letter dated 15.06.02 addressed to Additional Secretary (Home) with copy to DG cum IGP, Report dated 20.08.02 submitted to ACS (Home)and ACS letter dated 09.09.02 conveying the reaction, and the report dated 28.08.02 on the run up to Assembly elections were enclosed.

(d) The applicant submitted his third affidavit on 09/04/2005 with copies to Principal Secretary, Home Department, Government of Gujarat and D.G. & I.G. of Police, Gujarat State. The said letter dated 09/04/2005 reads as under: -

"Sir,

As instructed by the Director General and Inspector General of Police, Gujarat State, Gandhinagar, I had submitted two Affidavits to the Commission, (1) vide O.No. PS/ADGP (Int.) / 1224 / 2002, dated 15/7/2002, and (2) vide O.No. ADGP(PR) / PS / Affidavit / 2004 / 91 E, dated: October 06, 2004, on performance of duties by the officers and personnel in the State Intelligence Bureau under the supervision of Addl. DGP (Int.), Gujarat State, Gandhinagar, in relation to the terms of reference of the Justice G.T. Nanavati and Justice K.G. Shah Commission.

2/- Again, I respectfully submit before the Commission

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an additional Affidavit, in 3 copies (enclosed). This Affidavit contains my humble representation regarding harassment and victimization perpetrated on me on account of my deposition before the Commission on 31st August, 2004 and submission of the second Affidavit on 6th October 2004, by higher authorities, in the State Govt. This affidavit may kindly be given due consideration and remedial measures may kindly be ordered as early as possible.

3/- I may kindly be summoned before the Commission for submission of further data in this matter."

A perusal of the same shows that all the four letters referred to in Ann. A/2 of OA 213/05 are enclosed with it.

5(a) Apart from the OA the applicant has filed reply to MA for vacating Interim relief and rejoinder to the reply filed in the OA. These submissions are summarised in the paragraphs below.

(b) On his repatriation the applicant was assigned one important task after another. On his return he was posted as ADG(Armed Unit) and replaced a 1976 batch officer. He was asked to supervise the Relief and Rescue Operations in earthquake affected Kachchh district though it fell in charge of ADG (Law & Order) K.R.Kaushik. He was nominated as a Member of Mehta Committee to revamp State Intelligence. The recommendations of the said Committee were accepted. When he was posted as ADG

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(Int.) his predecessor had not completed even one year in that post. His tenure as Additional Director General of Police, State CID Intelligence, between April 2002 to September 2002, was the most challenging one in his entire career as his duty brought him in direct conflict with the personal, political, sectarian and communal interest of Respondents No.1 to 4. After the dissolution of Gujarat Legislative Assembly on 19/07/2002, the Chief Minister wanted to hold election for the Legislative Assembly urgently so that the newly elected members could hold the first session in October/November 2002 i.e., within six months of the dissolution of the same.

Central Election Commission visited Gujarat in the 1st and 2nd week of August 2002. In the meeting held on 09/08/2002, the applicant apprised the Central Election Commission about the law and order situation in Gujarat stating that an under current of tension and fear was prevailing beneath the apparent normalcy in the State. The Election Commission has referred to the assessment of applicant in para No.20 and 32 of its order dated 16/08/2002. It refused the request of the State Government to conduct the election at an early date.

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It is stated in the rejoinder that respondents in their reply claim to have acted impartially as they had taken no action against Mr. K.R. Kaushik, who had supported my view. The true reasons for not taking action against him are: (a) He supported my version of under current of tension and fear prevailing beneath normalcy for demanding extra central force but without supporting data (b) He did not file affidavits before the Nanavati Shah Commission in spite of being asked to do so. (The applicant had to accordingly file his second affidavit in respect of areas of responsibility though he was no more in charge), (c)He did not supervise the investigation of major cases of atrocities on Muslim particularly Naroda Patia and Gulbarg Society cases impartially and (d) Human right activists have represented against some encounter killing in which the victims were Muslims.

An explanation was sought for from the applicant for sending secret messages to his field officers by fax on 11.08.02 and which resulted in the leaking of said messages. The applicant informed that these data were urgently required to answer the queries raised by the Election Commission in its meeting held on 09/08/2002. The Govt. was informed that officers of SIB have been advised to observe highest level of discretion.

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Some examples of other officers sending secret messages by fax were quoted. The applicant was informed vide letter dated 20.09.02 that his clarification was not found satisfactory and Govt. have taken serious note of the matter. A further reply was sent to this letter asking to withdraw the view taken in the matter.

(c) The National Commission for Minorities deman d the speech delivered by the Hon'ble Chief Minister at Bahucharaji during his 'Gaurav Yatra' wherein the Chief Minster has reportedly made comments in bad taste against minority community. The verbatim speech of the Chief Minister was sent to the National Commission for Minorities. A copy of said speech is enclosed at Annexure A/6. The applicant was transferred on the next date.

It is stated in the rejoinder that I was verbally told not to send it as the Govt. was denying the availability of any verbatim transcript of the said speech. There is an endorsement of the then DGP on the said letter "ACS(Home) told me on 11th that we do not have to send any report in this regard. ADGP (Int.) be informed accordingly" (Annexure A/5).

(d) The applicant was called for cross examination by the Nanavati Shah Commission in the month of August 2004 on affidavit submitted before Enquiry

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Commission. Senior Bureaucrats and Police Officers wanted the applicant to commit perjury and deviate from the content of the affidavit filed by the applicant in July 2002. These intimidation was towards diluting the content of his affidavit and thereby set right the record of the respondents State of Gujarat in handling of Gujarat riots of 2002. Discussion of Shri Dinesh Kapadia, under Secretary, Department of Home, State of Gujarat on 21/08/2004 and those with Shri G.C. Murmu, IAS, Secretary, Law & Order, Department of Home, State of Gujarat in presence of Shri Arvind Pandya, who represents the respondent State of Gujarat before the Commission, on 25/08/2004 has been referred to. It is stated that the applicant was called by Secretary, Law & Order in complete violation of code of conduct and protocol and that the applicant was also threatened by the counsel for State that if he gives statement contrary to State Government's interest, he will be declared a hostile witness and dealt with suitably later on. These circumstances have been narrated in the affidavit dated 11/04/2005 filed before the Commission. (e) The applicant was asked by respondent No.4 by his orders dated 16.09.04 and 21.09.04 to file an affidavit on newly added terms of reference. The same was filed on 6.10.04.

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He was asked vide Memo dated 28.9.04 to explain within two days as to why he had not disclosed the fact that a departmental enquiry was pending against him for alleged misconduct during the Central deputation at the time when he was granted promotion as A.D.G. in August 2000. An explanation was furnished on 03.11.04 that it was for the Central Government to keep State Government informed of the same and that the promotion was given to the applicant w.e.f. 13.4.99 i.e. before the date of issue of charge-sheet. Persons charge-sheeted with him had also been granted promotion in their respective cadres. Para 3 of this letter reads as under:-

> "3. I respectfully stated that the authorities of the Government are not only biased against me but it appears that no effort is being spared to keep me busy fighting my problems, so that I do not come in their way, which, in my view, they believe I do. In this regard, a detailed confidential note is annexed herewith (See Annexure-B), which, if you so wish may be treated as a part of this explanation. In the event of my challenging any unjust and uncalled for adverse action against me, passed by the Government, I will have to place this explanation on record of the appropriate legal forum, which as a senior police officer and also as a dutiful and loyal Govt. servant. I wish should not go public. Therefore, under these circumstances, I request you to kindly accord the contents of the above note (Annexure-B), due priority and significance."

Reasons behind change in attitude of higher authorities have been referred to in para 4 to 12. These include the discussions with Shri G.C.Murmu,

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Secretary, Law & Orders and Shri A.Pandya. It is stated that verbatim version of meetings held by senior Home Department Officials are available. The said charge sheet was dropped in December 2005.

(f) After he filed the second affidavit on 06/10/2004, the State Govt. sent a letter dated 19.10.04 regarding a news item published in Hindusthan Times on 08.09.02. The applicant had submitted a letter dated 05.09.02 to Commissioner of Police regarding illegal activities of VHP which had been published in the said issue. The then DGP had enquired into the matter and had judged the action of the applicant to be an action taken in good faith and as part of normal duties vide his letter dated 03/10/2002. The applicant was still asked to give an explanation on 27/01/2003. The applicant had asked for certain documents. He had, however, not been given copies of documents in DGP office and he had received no communication, from office of ADG (Int.) and other offices. The reply was still furnished. A chronology is given in the rejoinder.

(g) The applicant has been bypassed for promotion to the DGP rank and Mr. K.R. Kaushik, who is his junior, has been promoted. The applicant has preferred O.A.213 of 2005, which has been admitted

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by the Hon'ble Tribunal. A diary, maintained by the applicant as an aide memoir, was annexed to the said O.A. The said diary was also produced before the Nanavati Shah Commission together with the affidavit dated 09.04.05.

(h) The further case of applicant is that the departmental enquiry has been initiated on the basis of his deposition and material presented by him before the Nanavati & Shah Inquiry Commission. It is violative of Section 6 of the Commission of Enquiry Act, 1952 and Rule 8 of AIS (Conduct) Rules. The decision of Apex Court in Kehar Singh's case regarding scope of Section 6 refers. A disciplinary proceeding is a civil proceeding. As the charge sheet is contrary to law it can be interfered with even at the initial stage. It is stated in the rejoinder as under:-

> "What has to be seen is whether, as suggested by the Respondents in their replies and the charge sheet, the mere filing by me of various statements and the submission of information to a validly appointed commission under the Commissions of Inquiry Act can ever be used to mount a DE or frame a charge sheet. In my submission they cannot. To allow the Respondents' submission would be to drive a coach and four through the Commissions of Inquiry Act. The Respondent's submission, if accepted, would strike at the very heart of the Commissions of Inquiry Act. It would have the effect of ensuring that the truth is forever hidden from a Commission appointed under that Act; that only such information as the Respondents think"appropriate" is submitted to the Commission; that no officer would ever give honest evidence before such a Commission for fear of reprisals in disciplinary proceedings. The

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implication is clear: that, according to the administration, maintaining discipline in service includes perjuring oneself before a Commission and actively aiding and abetting in concealing, the facts. Such an interpretation is perverse. It tantamounts to a subversion of the Rule of Law. Acting in pursuance of such an interpretation is patently unconstitutional. And, for all these reasons among others, actions based on such an interpretation can only be termed-and properly termed-as mala fide. There is, therefore, nothing remotely improper in any of my submissions. Nothing in the Rules permits the institution of a mala fide DE. It is specious to say that if I am confident that there is no substance in the charge-sheet then there is no reason for me to avoid the DE. To the contrary; my case is not merely that there is no substance in the charge-sheet but that such a charge-sheet is barred by law. There is, therefore, no question of my submitting myself to a decision on merits on a wholly illegal and statutorily barred charge sheet."

(i) The applicant had maintained the said register as an aide memoire for recording verbal instructions from higher ups like DGP. It was never disclosed by the applicant personally to the press and electronic media. It was filed before Nanavati Shah Commission and the Tribunal. It was disclosed to the public by his advocates, who were handling the matter before the Administrative Tribunal, and that too after the Minister of State had publicly commented on it. The authority have failed to consider that after the said register had been submitted to the enquiry Commission and it was taken on record by the Commission it became a public document. The applicant cannot therefore in

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any case be charged for disclosure of the contents of the said register.

(j) As regards the recording of conversation, it is stated that the same should be treated as a verbatim record of discussions with the assistance of modern, technology. The Government had been informed in annexure B of the letter dated 3.11.04 in this regard. It was not disclosed to the media by the applicant but the same was done by advocates engaged by the applicant before the Administrative Tribunal.

(k) The applicant had requested DGP to initiate suitable action to claim privilege before the applicant's cross examination through a letter dated 15/07/2004. The similar request was made by the applicant to DGP through Shri Arvind Pandya, Govt. Pleader to the Commission, but without any success. Section 123 of the Indian Evidence Act and Section 5 of Official Secrets Act have no application to the facts of the present case. In any case, the affidavit dated 15/07/2002 had been approved by the then DGP, Shri K. Chakravarti.

(l) It is also stated as under with regard to the averment that he was delaying the enquiry:

"It is incorrect to say that I was "killing

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time" . I have been prompt in my response. It was the respondent who took time in responding to my legitimate queries and responses. Further I have never participated in the enquiry. No Enquiry Officer has been appointed. There is no advantage in my delaying the enquiry as I am superannuating in February 07. A chart of relevant dates has also been enclosed. It appears from this chart that OA was filed on 21.04.06 the applicant submitted his written statement on 27.04.06 stating that he is denied the opportunity of defending himself as documents were not given. Notice was issued on 01.05.06 staying the proceedings".

(m) The nine charges in the charge sheet are divisible into three and only three categories- these relating to so called diary or register, those relating to audio recording and those relating to IB reports. Charges 1 to 4 relate to claiming a private diary to be an official one, making public disclosure without prior permission, making public disclosure through his representatives with an ulterior motive to malign higher officers/authorities and State Govt. and tarnish their reputation out of Vindictiveness as he was not promoted to rank of DG, and that the said disclosure resulted in adverse criticism of the State Govt. and was capable of embarrassing the

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relations between Central and State Govt.

Charges 5,6,7 relate to clandestinely and unauthorizedly recording the conversation with Secretary (Law & Orders) and Special Govt. Counsel, unauthorizedly parting with the said information without obtaining permission, and parting with the same through his representatives to malign Secretary (Law & Orders), Special Govt. Counsel and State Govt. as a whole and tarnish their image and reputation (Surprisingly conversation with Dinesh Kapadia is not made part of the charge).

Charge 8 relates to enclosing with the affidavit dated 15.07.02 filed before the commission reports of Intelligence Bureau and violating Section 5 of official secrets Act and 123 of Indian Evidence Act.

Charge 9 relates to retaining the copies of secret reports of IB and enclosing the same as Annexure -2 of OA.213/05 without taking prior approval.

The charges stems from filing before the Commission. This information was to the knowledge of authorities. Its disclosure to commission not only remained unopposed but despite request privilege was not claimed. No grievance was made of either of the affidavits and the grievance comes for the first time in charge sheet. This information accordingly passed into public domain.

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No disciplinary action can be taken on such a cause of action. It is settled law that truth is an absolute defence to any such charge and the truth of what has been stated is not denied nor have they been adjudicated to be incorrect let alone knowingly incorrect. The same is the sine qua non for any action for defamation.

When he was cross examined on 31.8.04 there was no suggestion from the Government counsel that it was a misconduct. It is further stated:

> "If, as the respondents say, this material is removed or withdrawn from the charges, then the substratum of the charges no longer exists, and there remains no ground whatever for issuing a charge sheet. There are only two possibilities; (a) either the charges are framed on the basis of my filings before the Nanavati-Shah Commission, in which case the charge sheet is illegal; or (b) without these filings, no charge arises and therefore no charge sheet can be filed, and the entire D.E is without foundation, unlawful, illegal and mala fide and violative of Articles 14, 16, 21 and 311 of the Constitution of India. N either case, the D.E is illegal and calls for intervention by this Hon'ble Tribunal.
>
> It may be noted that in para 3 of the M.A., the respondents have stated:
>
> > "I submit that no statement made by the opponent (viz., myself) before the Justice G.T. Nanavati and Justice K.G.Shah Commission is <u>either made a basis to proceed</u> against him <u>or it is intended to be used against him</u> in the D.E and therefore the D.E cannot be regarded as contrary to law and therefore the Hon'ble Administrative Tribunal has no jurisdiction to stall enquiry proceedings."
>
> This statement is false to the knowledge of the respondents. The deponent of the M.A has perjured himself. The documentary evidence appended to the charge sheet lists all three affidavits I filed before the Nanavati-Shah Commission. Further, and in any event, this submission overlooks the words "shall

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subject him to" in Section 6 of the Commissions Act, as submitted above.

This was accepted as evidence by the Commission on 13th April 2005. It thereupon became a public document and was openly accessible to the entire public. I have already set out my submissions regarding this register above. From 14th April 2005 onwards, this register was subject to public criticism inter alia by Shri Amit Shah, the Minister of State for Home (the 1st respondent to the O.A) on 15th April 2005. Thereafter, the advocates then appearing for me held their own press briefing regarding the register. I did not participate therein and cannot be vicariously liable for the same. In any case nothing was disclosed at the press briefing that was not already known or disclosed to the Commission on affidavit and to this Tribunal in my O.A.No. 213 of 2005 filed on 9th April 2005; or could, therefore, have been known to the public at large since, on such filing, these documents passed into the public domain.

It may be noted that on 26.5.2005, news reports appeared stating that the Union Minister of Law had announced in New Delhi that a panel of three Ministers was examining the contents of this register. Thus, the allegation that the register adversely affected Centre-State relations is not only incorrect but ludicrous. The allegation is a mere flourish, without substance or material particulars.

The enquiry into the truth is being done by the Nanavati-Shah Commission, not by the respondents, who are among those deposing before it. It is, therefore, not for the respondents to adjudicate on the truth, admissibility or probative value of material placed before the Commission; nor are persons appearing before the Commission required to place only Government approved (and hence sanitized) material before the Commission. National level bodies such as the National Human Rights Commission (NHRC), the National Commission on Minorities (NCM) and even the Hon'ble Supreme Court of India have adversely commented at various times on the Gujarat Government's partisan approach in investigation of the post Godhra riot cases in which members of the Muslim community are complainants and victims. The Gujarat Government took the stand that they had initiated appropriate administrative measures on all reports of mal-administration that harmed riot victims.

This affidavit was filed under advice and with a

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covering letter and copy to my superiors. Despite these reports, the respondents did not initiate efficient remedial action, though recommended.

It is clear that the fifth, sixth and seventh charges are also wholly dependent on the evidence placed before the Nanavati-Shah Commission regarding inter alia, acts of criminal intimidation (under Section 506, IPC); obstruction of a Government servant from discharging his public functions (under Section 186, IPC), and abetment to perjury. The Nanavati-Shah Commission is seized of these, and related, matters. It is within the powers of the Commission to initiate or recommend action against G.C. Murmu for these acts, which the media has widely reported (and for which reports I cannot be held responsible).

It is incorrect and misleading to say that Charges 8 and 9 do not relate to the Nanavati-Shah Commission. Charge 8 in terms speaks of what of "required" permission of certain material before disclosure to the Nanavati-Shah Commission. Charge 9 refers to the aforesaid four intelligence reports and which, as set out above, were appended to the second affidavit I filed before the Commission, a copy whereof I forwarded to my superiors as early as 6th October 2004. These reports pertain to the subsequently expanded second terms of reference of the Commission. It is, therefore, quite incorrect to say that Charges 8 and 9 are unrelated to filings before the Commission.

(n) Of the 31 relied upon documents 9 have been filed before the Commission by the applicant, another 9 are statement of witnesses in connection with those documents, 12 are media reports on filing and one is my original application O.A.213/2005 before the Tribunal. This register has been appended to third affidavit filed before the Nanavati Shah Commission. The said register had been commented upon by the Minister of State for Home from 14.4.05 onwards.

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(o) There is no question of delay, acquiescence or estoppel.

6(a). The respondents filed a M.A. for vacating interim relief on 07/08/2006, filed a rejoinder to the reply filed in the said M.A, and a reply to the O.A. These can be summarised as under:

(b) It appears from submissions made in the Original Application and from the conduct of the applicant that;

(i) the applicant is proceeding on unwarranted preconceived notions and presumptions such as his statements before the Election Commission were not liked by the respondents or the ruling party, Government functionaries senior politicians and others.

(ii) His statement exposed Government machineries, senior politicians and others.

These allegations have been denied. The relevant part of para 7 of reply reads:

"I deny each and every allegation, averment and statement made in the application. I say that such allegations, averments and statements are without any basis and based on imagination. I say that in order to gain sympathy, such wild, vexatious, scandalous and false allegations have been made against respondents. I say that the applicant has referred to in Original Application, proceedings pending before other forums/authorities and role played by him before such

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Forum/authorities. It is respectfully submitted that praying this Hon'ble Tribunal to go into merit and demerit of proceedings before other Forums/authorities which are still pending and at large and which are not even otherwise relevant for deciding the question. This is highly improper as it may embarrass other Forums/authorities while they deal with same on merits in future and possibilities of taking conflicting views cannot be ruled out. Again the averments, allegations made against the respondents involved disputed facts and Hon. Tribunal cannot be asked to enter into and decide the same."

(c) As regards representation made before the Election Commission, the observations made by Election Commission in its reports at page-41 can be referred to. The Government did not take any action against Mr. K.R. Kaushik. There is nothing on record to show that the Government initiated any action against the applicant between 09/08/2002 and 16/08/2002 and the explanations dated 16/08/2002 can not be linked with the order of Election Commission on 16/08/2002.

As regards verbatim speech of the Hon'ble Chief Minister at Becharaji during Gaurav Yatra, a letter was written by Joint Secretary to the Government of India to Chief Secretary, for sending the speech and the applicant was directed on the same day to send the said speech to National Commission for Minority. The applicant has merely acted pursuant

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to the directives of the Government. There is no connection between his transfer on 18/09/2002 and his sending copy of verbatim speech to the National Commission for Minority. The applicant was transferred for administrative reasons and on the same day other officers were also transferred (No order has, however, been brought on record).

(d) As regards filing of affidavit before the Honourable Commission, other police officers were also requested to file their affidavits before the Commission. In the said affidavit, there is no personal allegation against any of the respondents. The averments relating to philosophy of political parties are irrelevant and cannot be gone into. With regard to third affidavit dated 09/04/2005, it is submitted that the same has been filed subsequent to the Selection Committee adopting sealed cover procedure and bypassing him in the case of promotion. Looking to time gap between the said meeting and memo dated 6/9/2005 , no man of ordinary prudence will ever construe the same as the basis for initiating enquiry proceedings.

The conversation with Mr. Dinesh Kapadia, Mr.G.C.Murmu and Advocate Mr. Arvind Pandya, was never disclosed to the Commission at the earliest opportunity i.e., while filing the second affidavit on 6.10.04 and was disclosed only after sealed

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cover procedure had been adopted in case of his promotion. It is denied that anybody from the Government ever asked the applicant to commit perjury before the Hon'ble Commission as alleged.

(e) The Chief Secretary of the State had discussions with the Union Home Secretary regarding posting of IPS officers in the State. It was only then that the State Government came to know that applicant has been served with a show cause notice for departmental enquiry for major penalty while the applicant was on Central deputation. The Government of India was requested for taking necessary action against the person for not informing the State Government at appropriate time and to advice if he could be reverted to 1G rank. (Jan. 2004). The Government of Kerala was also requested to furnish information. The Government of India informed that a charge sheet was issued and the reply received was under examination. Other informations were not received. The Government of Kerala did not furnish any information. The applicant was repatriated to State Government on 16/06/2000 and given a proforma promotion on 09/08/2000. A memo was accordingly issued to the applicant, who had ample opportunity to intimate the State Government about pending enquiry against him. The applicant, who claims in

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this O.A to possess very high morals and ideals, instead of disclosing the same took a hyper technical stand that it was for Government of India to intimate.

(f) The memo dated 19/10/2004 was only a reminder as the applicant was avoiding filing explanation to Chief Secretary's letter dated 27/01/2003 on one pretext or an other. The applicant has sent his reply dated 3.11.2004.

(g) The recommendations of Selection Committee have been kept in sealed cover. The same has been challenged by filing OA 213/05.

(h) It is contended that Section 6 of the Commission of Enquiry Act, 1952 and Rule 8 of the All India Services (Conduct) Rules 1968 are rules of evidence and confer no substantial right. Neither these nor the decision of the Hon'ble Apex Court in the matter of Kehar Singh contemplate stay of the civil or criminal proceedings. Disciplinary proceedings are neither civil nor criminal in nature. The Bar envisaged in Section 6 is in respect of receiving the statement before the commission as evidence and nothing beyond that. Therefore, without admitting the same to be true, the Hon'ble Tribunal at the most can direct Enquiry

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Officer not to accept the statement made by applicant before Justice Nanavati and Shah Commission as evidence in departmental enquiry but cannot stall the departmental enquiry. The enquiry is in accordance with law. Reliance is placed on the decision of Apex Court in ***Union of India vs. Upendra Singh reported in (1994)3 SCC 357***, to assert that the Tribunal has no jurisdiction to go into correctness or truth of the charges at the initial stage and that the Tribunal can only interfere if the charges framed are contrary to law or they are not disclosed on the basis of documents on record. By no stretch of imagination, charges framed can be read as contrary to law.

(i) No statement made by the applicant of the O.A. has been filed or is intended to be used against him in the departmental enquiry.

Diary was claimed to be an official diary in support of which media reports etc. have been relied upon. If the said report/diary is not an official diary it passes beyond comprehension as to how Section 6 of Commission of Enquiry Act, 1952 can be relied upon by the applicant to stall the departmental enquiry proceedings. The second charge relates to failure of the opponent to obtain

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prior permission of the higher authority for maintaining such a diary, third charge relates to public disclosure of the private and unauthorised diary before the Press and Media with the ulterior motive to malign higher officer/ authorities and State Government. It had the effect of an adverse criticism of the State Government and was capable of embarrassing the relations between the Central Government and State Government.

The fifth, six and seventh charges relate to unauthorised recording of conversation and parting with the distorted version of such unauthorised unathorised recorded conversation to Press and Media to tarnish the image of other officials and State Government.

Similarly, eighth and ninth charges are also in no way related to Nanavati and Shah Commission.

(j) The diary/register is not admitted to be genuine and as having recorded true facts. The manner in which contents of the diary/register are disclosed to media suggest beyond doubt that the applicant's design was to lower the reputation of the State Government as his assessment was kept in the sealed cover. The appropriate authority is the Honourable Commission to take decision with regard to diary/register was lawful and are required by the protocol and rules. The above said

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points cannot be raised before the Administrative Tribunal.

The applicant has miserably failed to justify recording the dialogue with the officer of Home Department and the reasons offered by the applicant are result of after thought and not convincing. The explanation offered is unreasonable, unnatural against the natural course of things and unsubstantiated. The applicant has never repudiated the so called suo motto action of his own advocates. The applicant is unnecessarily throwing the blame on others for the charges levelled against him.

(k) It is further contended that the O.A. is filed seven months after the issue of charge sheet dated 6.9.05. The applicant has been killing time on one pretext or another by calling upon the respondents to furnish defence documents although the stage for the same had not arisen. It is contended in para 5 of the reply dated 7th September 2006 that no cause of action has accrued to the applicant. It is contended in para 6 of the reply that application is barred by delay and acquiescence. The applicant is estopped from praying for the relief of quashing of charge sheet as he has participated in the proceedings and has also submitted his statement of defence to the memo of charges. It is stated in

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para 11 (u) that stage of appointment of enquiry officer has not arisen. It is stated in para 5 that departmental enquiry is nothing but an attempt to ascertain whether or not there is an element of truth in the chargesheet after providing an opportunity of being heard and following principles of natural justice and therefore the departmental proceedings are ordinarily not stayed.

7. We have heard the learned counsels. We had also permitted the counsels to file written submissions. We have gone through them also.

8. The learned counsel for the applicant has filed a detailed written submission. It is summarised as follows:-

(a) He has referred to a paragraph in the rejoinder as laying down the substance of the case. This paragraph had been extracted in para 6(h) above and the paragraph relied upon starts with the "beginning" and ends with ".... can only be termed as malafide". (Fourth line from bottom on page).

(b) Attention is drawn to the phrases shall subject him to and any civil or criminal proceedings except a prosecution for giving false evidence appearing in Section 6 of Commission of

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Inquiry Act, 1952. Relying on the decision of Apex Court in Kehar Singh (infra),[13,16] report of Law Commission (infra)[13,15] & T.T. Anthony [14] (infra) it is asserted;

> "4.2. A Commission of Inquiry is a fact-finding body. It does not adjudicate. It does not decide the rights of parties. Indeed, there are no 'parties' before it, in the sense of contestants in an adversarial legal system. There is no lis, properly so called. A Commission's procedure is inquisitional rather than accusatorial[13]. Indeed, its report is not even binding, but is only to advise and inform the Government and make recommendations[14]. The Commission can even receive hearsay evidence, second- or even third-hand[15].
>
> 4.3. A Commission's purpose is to arrive at the truth; and this exercise is inherently impossible without the omnibus protection afforded by Section 6. But for this provision, persons would keep from a Commission vital information essential to its function in attempting to get to the truth of the subject matter of the enquiry.
>
> 4.4. The Section, it has been held, has but one exception; and that is a prosecution for perjury. When the legislature has expressly provided a singular exception to the provisions, it has to be normally understood that other exceptions are ruled out."

(c) In view of this provision of law the invocation by the State of the provisions of Section 5 of official Secret Act and Section 123 of Evidence Act is futile. Any restrictions in any rules or acts inhibiting and preventing disclosure are suborned to the provisions of Commission of Inquiry Act. On these, the applicant was required to disclose these by orders of superiors and he did so under advice.

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No action was taken after either at that time or within reasonable time thereafter. The first affidavit was filed under original terms of reference on which he was cross-examined on 31.8.04. The then DGP asked him to file a second affidavit on 16.9.04 & 21.9.04.

(d) Audio recording was a mere aide-memoire. Conceptually it is indistinguishable from an eidetic memory, photographic memory or total recall. Reliance is placed on Yusufalli Esmail Nagree vs. State of Maharashtra, AIR 1968 SC 147 (para 6,8 & 9); R.M. Malkin vs. State of Maharashtra, 1973(2) SCR 417 (424 pl F); Pooran Mal vs. Director of Inspection 1974(1) SCC 345 (para 23,24), Pushpa Devi M. Jetia vs. M.L. Wadhwan,1987 (3) SCC 367 (Para 20) and State vs. NMT Joy Immaculate, 2004(5) SCC 729 (paras 14 & 15.2) to assert that the law is well settled that evidence, if relevant can be admitted irrespective of the manner in which it was obtained. The act of tape recording itself cannot, therefore, be conduct unbecoming per se. The Register, too, was nothing but an aide-memoire to record illegal instructions from superior officers. The then IGP (Administration & Security) certified the page number only and not the contents. It is stated as under in para 7.3 & 7.4;

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"7.3. The disclosures of the Register and the audio-recordings to the Commission are disclosures of illegalities committed by the State. Whether or not these are true is not to be tested in these proceedings; the point is that they were filed before a Judicial Commission, which has not rejected them in limine. They point to potentially criminal acts by or at the behest of the Administration during the relevant time. They are relevant to the Terms of Reference of the Commission. Upon filing, they passed into the public domain. To say that such a disclosure is misconduct is nothing but an attempt to trifle the truth from being exposed; and telling the truth can never be a ground of misconduct or the subject matter of a disciplinary enquiry.

7.4. To this day the State administration has never even attempted to challenge the correctness of Sreekumar's filings before the Commission; or even contended that the third Affidavit should not be taken on file by the Commission."

(e) In a matter such as these the Tribunal can only see if on the charges framed, no misconduct can be said to be made out or charges framed are contrary to law. (Upendra Singh (infra)). This is exactly the concept of demurrer in a civil action or a discharge application under section 239 of Cr.P.C. The enquiry is barred by Section 6 of the Commission of Enquiry Act.

The State has laboured to show that disciplinary enquiry is neither civil nor criminal. It amounts to reading into Section 6 further words to an unambiguous statute, which is wholly impermissible. There is nothing in the statute to

warrant this interpretation. It would mean ignoring a binding decision in the case of Kehar Singh.

Reliance is placed on the decisions in SAL Narayan Rao & Another (infra) & Ramesh (infra) to assert that character of the proceeding depends on the nature of the right violated and not the relief claimed. If a claim result in relief such as determination of status, enforcement of personal rights it would be a civil proceeding. It has been held that civil proceeding is one, which is not criminal. There is thus nothing to show that all disciplinary proceedings are not ipso facto civil proceedings. In any case, Section 6 admits of only one exception and grants no exemption for disciplinary proceedings.

(f) If what the respondents say is correct then no serving officer of any administration could ever depose truthfully before any Commission. Every Civil Servant would be faced with a Hobson's choice; either commit perjury or face a disciplinary enquiry. This is precisely what Section 6 is intended (and designed) to avoid. On facts, no attempt is made by the State either to dispute the correctness of the three affidavit filed by the applicant or to contest the acceptance

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of the third affidavit.

The approach of the Administration seems to be that should any officer show fidelity to his oath of office and Constitution of India by making an honest disclosure before the Judicial Commission appointed under the Commission of Inquiry Act inter alia the actions of the State, the officer is liable for punitive action by the State.

(g) Charge 1 & 2 is attributed to applicant's representative and not to him (sic; Charges 3 & 4). Charge 2 is mutually destructive of charge 1. Charges 3 & 4 attribute ulterior motives with a view to tarnish the image of State Administration or its officers. In case the filing have tarnished the image of any person i.e., it has prejudicially affected him then even in that event it is also a matter within the province and jurisdiction of the Commission. Section 8B of the act refers. Charge 5 is regarding taperecording of conversation, which cannot be a misconduct. Charge 6 is as peculiar as Charge 2, for it demands permission to be taken before disclosing something, which according to respondents is in its inception an act of misconduct. How permission can be sought is never explained. Charge 7 is like Charges 3 & 4. Charge 8 relating to filing of IB reports is not only contrary to Section 6 of Commission of Inquiry Act &

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but overlooks respondents own conduct. The same is not explained in the present O.A. Section 123 of Evidence Act is a rule of procedure and has no application, whatsoever for a Commission of Enquiry. It betrays the true intention underlying the charge sheet that is disclosure of truthful information to the Nanavati Shah Commission. With regard to charge 9 it is stated that placing material before a Tribunal cannot be an act of misconduct.

Besides this for some inexplicable reasons the applicant has not been charged for tape recording of evidence and making public the conversation with Mr. Dinesh Kapadia, the Under Secretary. The applicant had informed in his letter of 3.11.04 that he had in his possession not only documentary evidence of illegal oral instructions given to him (viz., the register) but also the audio recording of conversations with Mr. Kapadia and later with Mr. Murmu/Mr. Pandya. The administration did not demand the material from him. It remained silent. After he protested his supersession in a lawful forum and reported the material to the Commission the administration issued the charge sheet. The conclusion is inescapable: mala fides are writ large on the charge sheet.

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In any case the twin tests laid down in Upendra Singh (infra) are satisfied.

(h) A faint attempt is made in oral arguments that Charge 8 may not be pressed and is severable. This argument is contrary to pleadings and has to be rejected. In any case the charges are interlinked and cannot be severed. Decision in Union Bank of India v. Vishwa Mohan, 1998(4) SCC 310 refers. If as stated in the OA, the respondents were to remove all the Commission related materials nothing would survive. The decision in Management of Krishnakali Tea Estate vs. Akhil Bhartiya Chah Mazdoor Sangh refers. It has nowhere been suggested that filings are not relevant to expanded Terms of Reference. Protection afforded by Section 6 is complete.

(i) It is stated in para 8.5 of written submission.

> "The matter can be reviewed from another angle also. If what the respondents say is correct, then no serving officer of any administration could ever depose truthfully before any Commission, for should he mistake of so doing, he would undoubtedly incurr the wrath of the administration and invite a disciplinary proceeding. Every civil servant would then be faced with a Hobson's choice, either commit perjury or face a disciplinary enquiry. This is precisely what Section 6 is intended and designed to avoid."

OA should be allowed with costs.

The respondents have filed a written summary of

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oral submissions made at the time of hearing. It is further stated that this should be read along with the M.A for vacating interim relief and the written statement filed in the reply. It is stated:

(a) Section 6 of Commission of Inquiry Act is not a substantive law but a rule of procedure. So is Rule 8 of AIS (Conduct) Rules. (Pleadings).

(b) The applicant in his OA as well as reply filed to MA for vacating interim relief and rejoinder had stated that challenge is based on disciplinary proceedings being civil proceedings. At the time of arguments it was contended that they belong to other proceedings, which are neither civil nor criminal, but even these other proceedings are covered by observations of Justice Jagannath Shetty in Kehar Singh's judgment. Such interpretations are misplaced and without any basis. The case of Kehar Singh admittedly was a murder trial and therefore a criminal proceeding. The Apex Court in Union of India v. Major Behadur Singh, 2006 SCC (L&S) 959 has held that reliance should not be placed on a decision without discussing the fact situation. The fact situations are totally different. The applicant has produced certain affidavits and statements before the

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Commission. The same are not to be used against him. Charges, except 6 & 7, relate to unauthorised publication. Hence the ratio in Kehar Singh cannot help the applicant.

(c) Two sets of judgments were cited to show that departmental proceedings are not civil proceedings. The question in case of Laxmi Narain (infra) was whether High Court had a jurisdiction to pass orders for transfer of proceedings under Section 14 of Legal Practitioner's Act. The High Court observed that these proceedings are not civil proceedings. 1922 Calcutta 515 was relied upon to show that proceedings under Legal Practitioner's Act are not civil proceedings. It has been observed at pages 528 & 529 that such proceedings are quasi criminal in the sense that they may result in penalties. These quasi criminal proceedings are not criminal proceedings. It can therefore be said that departmental proceedings are neither civil proceedings nor criminal proceedings.

The pertinent observation in SAL Narayan Rao infra) are that whether proceedings are civil or not depend upon the nature of right violated and appropriate relief which may be claimed and not upon the nature of Tribunal. It is observed in para 16 that there is no reason to restrict the

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expression civil proceedings to civil suits or proceedings tried as civil proceedings and exclude proceedings under Article 226. The assertion of the learned counsel for the applicant that latter observations show that departmental proceedings are covered in the description of civil proceedings is a misinterpretation of the judgment. There is no question of violating any right, more particularly a civil right. In a departmental proceeding there is no question of any part (sic. Party) asserting assistance (sic. Existence) of a civil right or breach thereof. Thus departmental proceedings are not civil proceedings. An argument was further advanced that departmental proceedings involve civil consequences and therefore they are civil proceedings. Departmental proceedings can never be civil proceedings as there is no challenge to infringement of civil rights. They may involve civil consequences ultimately but they do not change the nature of proceedings from quasi criminal to civil proceedings. The imposition of fine in a criminal proceeding cannot mean that a criminal trial becomes a civil proceedings. Therefore, considering all the aspects of law on the point it cannot be said that departmental proceedings are civil proceedings.

(4) The applicant has contended that he is

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protected by Rule 8 of Conduct Rules. Sub Rule (3) of Rule 8 is an exception to sub rule (1) & (2). It is, however, difficult to understand how this Rule can give him any protection. The charges are not in respect of evidence given before the Commission. All charges except charge 8 relate to publication of material placed before the enquiry Commission. The same is not protected by sub rule (3) & (4). It is further stated;

> "But on the contrary Rule 8 (4) prohibits such publication for which the applicant has been served with the charge sheet. He can't misinterpret these under the guise of claiming it as privilege document and material once produced before the Commission becomes public and he has call right to publish it. It is the prerogative of the Commission what to publish or not."

(e) The applicant has published the contents of the said diary but he wants to avoid the liability by imputing the act of publication to his lawyers. The fact remains that the advocates act as representative and agents of clients and they act as such. The applicant cannot avoid his responsibility in the matter. Serial 13 of the relied upon documents is a newspaper report. The news report shows that applicant was very much present and in the background. In any case it is for the enquiry officer to enquire into the correctness or otherwise. The applicant has

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claimed the diary to be public or private as it suited his purpose. This diary is not one of the diaries referred to in Chapter VI of the Police Manual. This is supported both by his predecessor and successor. The superior officer has stated that he has only authenticated the number of pages in the diary.

(f) Even if it is assumed for arguments sake that Section 6 of Commission of Inquiry Act is applicable to departmental proceedings, charges 6 & 7 do not come within its purview. The statement of imputation dealing with Chapter VI (sic. Charge 6) specifically states that newspaper Tehlka published part of tape recorded conversation in publication dated 12.3.05 wherein there is a specific mention that these details were parted by applicant and without prior approval. This was produced before the Commission with third affidavit on 11.4.05. It was published in the newspaper Dainik Bhaskar on 4.3.05. (Serial No. 24 & 25 of the relied upon documents).

The applicant has not acted in good faith and the authenticity of the tape recording and diary is very much in doubt. The applicant deposed before the Commission on 31.8.04 and filed second affidavit on 6.10.04. At no point of time and

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nowhere during this period the applicant has made any mention of the diary or the tape recording.

(g) The applicant has imputed a motive to the State Government stating that enquiry has been initiated against him with malafide intention of penalty. The applicant has superannuated from service on 28.2.07. The penalty can be imposed by Central Government in consultation with UPSC. The apprehension is without any foundation. It is further stated:

> "The allegations of bias and malice have been based upon various instances cited by the applicant in the OA. In fact all these allegations are nothing, but almost verbative repetitions of such allegations made in OA.213/2005. No judicial notice can be taken of the fact that in the OA No.213/2005 all the allegations have been withdrawn/not pressed. It was also pointed out relying upon the Supreme Court judgment that if the facts are proved, then it is immaterial whether there
>
> was malice or not. Unfortunately in this case the stage of factual proof has not arrived. But the same principle is applicable."

The applicant is guilty for delay in departmental proceeding. Relied upon documents were given along with the charge sheet. On his request legible copies of some of these documents were given. The applicant asked for supply of defence documents the stage for which has not arisen. He submitted his reply at a very late

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stage and the same was under examination.

(h) This is not one of those rare and exceptional cases where the charge sheet is wholly without jurisdiction or otherwise, wholly illegal. Reliance is placed on Upendra Singh, District Forest Officer vs. Rajamanikkam, 2000(9) SCC page 284 and Union of India vs. Kunisetty Satyanarayana 2006 (12) SCC 28A.

10. The following questions arise in the present OA:

(a) Does the expression "civil proceedings" in Section 6 of Commission of Enquiry Act include "disciplinary proceedings" initiated against an officer in respect of evidence tendered by him ?

(b) Does Section 6 of Commission of Inquiry Act and Rule 8 of AIS (Conduct) Rules confer substantive rights under law or are only rules of evidence/procedure ?

(c) Can a charge sheet be issued in connection with publication of evidence tendered or an attempt to influence the evidence to be tendered before the Commission of Inquiry even before the Commission has applied its mind and is seized of the matter ? What is the scope of Rule 8(4) of AIS(Conduct)

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Rules and who can complaint of its violation ?

(d) Whether having regard to the answers to these questions and the facts of this case the applicant is entitled to the quashing of the charge sheet in terms of the law laid down by Apex Court.

11. The applicant in para 6.8 of the OA has referred to the conflict between implementation of orders of respondents 1 to 4 and the need to uphold the constitution particularly the basic structure of Constitution. The learned counsel for the applicant has in para 8.5 of the written arguments (para 8(i) above) referred to the Hobson's choice before an officer i.e., to perjure himself before the Commission of Inquiry in respect of evidence tendered (in respect of illegal orders) earlier or to face departmental proceedings for speaking the truth.

It is evident that the questions referred to in paragraph 10 have to be examined in a larger context of what an officer has to do in case he feels that the instructions from superior are contrary to values enshrined in the Constitution law etc. &

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The vision of founding fathers of the Constitution of the type of society, they wanted to create in future is contained in the preamble to the Constitution. The cabinet system of Government has been introduced into the Indian Constitution from British Model. The Constitution provides for All India Services. The Constitution also provides for setting up of UPSC and State Public Service Commission.

The Minister Civil Servant relationship is an important part of Parliamentary democracy. Instructions were issued when the new Government came to power in 1977 regarding role of oral instructions. There may be an expectation that they have to be complied with even if they are not in accordance with law. Should a record of such instructions be kept and should they be disclosed to a Commission of Enquiry ? Such directions may be in respect of functions which are statutorily prescribed or have been laid down in policy instructions etc. The position may be different in respect of Secretaries and other officers posted in the Secretariat and those posted in field. Article 166(3) of the Constitution prescribes for framing of Rules of Executive Business. They provide who shall be the State for the purposes of taking decisions in different matters. The rationale and

purpose of enactment of Commission of Inquiry Act and its role if any, in strengthening democratic principles and deepening democracy have also to be kept in mind.

12. H.B. Seervai begins the discussions in Part-I, of Chapter XXVII of his Constitutional Law of India by quoting the following:

> "Have you read that history ? (the history of safeguards for the Indian Civil Service). Or you do not care for recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand on your pledged word; and, also, as a man of experience I tell you do not quarrel with the instruments with which you want to work. .... Have morals no place in the new Parliament ? .... To-day, my Secretary can write a note opposed to my views. I have given that freedom to all my Secretaries. I have told them 'if you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary". I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal and as sincere as myself."
>
> - Sardar Vallabhbhai Patel,

> "Exhortations have in the past often been addressed by political leaders that public functionaries must be committed servants of the Government. These have in no small measure been responsible for some of the serious consequences that had followed certain steps taken by the Government servants during the emergency. The commitment of a public functionary is, however, to the duties of his

office, their due performance with an accent on their ethical content, and not to the ideologies, political or otherwise, of the politicians who administer the affairs of the State. Commitment by the public servants, therefore, means only and entirely, commitment to the policy and programmes of the Government insofar as the policy and programmes are in conformity with the fundamentals of the Constitution..... Unless the Services work for and establish a reputation of political neutrality, the citizens will have no confidence in the impartiality and fairness of the Services. It is expected of the Services that they would tender frank, informed and well-considered advice without getting personally involved in their present position or their future advancement, however unpalatable such advice may be to the political head of the Ministry..... The Commission has had occasion to peruse the findings of the earlier Commissions appointed by the Government at the Centre and in the States to probe into the conduct of the Ministers of the State Governments. The Commission is not aware of the action taken, if any, in response to these Reports submitted from time to time in regard to the Minister - Civil Servant relationship ..... however, ... the refrain in all these Reports in so far as this concerns the relationship of the Ministers with the Civil Servants, is the same. One cannot but be struck by the near-unanimity in the observations of the several Commissions on the unhealthy factors governing the relationship between the Ministers and the Civil Servants. Yet nothing seems to have been done, at any rate, effectively, to set right such of the aspects of these relationships which, prior to the emergency, had contributed to the several developments which came in for indictments by the Commissions. In the light of this, it may be easy to conclude that what happened during the emergency is merely a tragic culmination of the particular trend that had been identified and condemned from time to time by the Commissions of the past. The Commission owes it to the citizen of India to emphasise that appointments of Commissions by themselves are not enough if the Governments concerned do not follow up and implement at least such of the recommendations as are avowedly accepted by the Government. Unless the Government is prepared to apply the corrective principles in the Minister-Civil Servant relationship effectively and with a determination to

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produce the desired results at different levels and within the several components of the Government, the agonising impart of this unfortunate malaise would be felt by the common man in the streets, in the villages, in the factories and in the far distant corners of this vast country." (italics supplied)

... - The Shah Commission Report."

Part II is titled "The Shah Commission Report"- The Relation between ministers and Civil Servants, "The Root of All Evil". He writes in paras 27.105, 27.107, 27.116, 27.117 as under:

"27.105. We have discussed in Part I the various safeguards provided in Part XIV in order to secure an efficient, incorrupt and a non-political Civil Service. If the Constitution made no attempt to demarcate the respective spheres of the Civil Servants and Ministers, their functions and duties it was assumed that the British model which we have adopted gave sufficient guidance as to the relation between a permanent non-political Civil Service and the Ministers in charge of the various departments of the State. This assumption was unfortunate, because before the Constitution was enacted, the far ranging vision of Sardar Vallabhbhai Patel saw the danger to the unity of India from a servile Civil Service (see para 27.116 below). However, the draft Constitution had reached a stage on Oct. 10, 1949 where it was impossible to devise a new scheme for the selection, appointment, transfer, promotion and other matters affecting the members of the Civil Service. Besides, the wholesale abuse of power which came to a head during the Emergency, was not envisaged by the leading members of the Constituent Assembly, who believed that with freedom and independence would come the opportunity, which had long been denied to them, to serve the people. Believing, as I do, that the happiness of the people depends on a competent, well paid, efficient and an incorrupt Civil Service devoted to the public good - a Service detached from Party and attached only to the State, I have thought it necessary to consider the relevant parts of the Shah Commission Report at this place.

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27.107. Mr. Justice Shah was struck by the fact that no effective action had been taken on six Inquiry Commission Reports notwithstanding their near-unanimity "on the unhealthy factors governing the relationship between the Ministers and civil servants". This inaction led by to conclude "that what happened during the emergency (was) merely a tragic culmination of the particular trend that had been identified and condemned .... by the Commissions of the past". The Shah Commission Reports have been accepted by the Union Government, but the impression has gained ground that these valuable reports will share the fate of the earlier reports notwithstanding Justice Shah's grim warning that if the evil, which has been condemned by the earlier Commissions and his own, is not eradicated, all that happened during the Emergency might happen again. As we have seen, he recommended that "droit administratif on the French model could be usefully adopted by the Government", and was content to conclude his final report with the "simple human message" that "if a democratic heritage is to be left for future generations, we should want the truth again to be enshrined in its legitimate place in the social, economic and political scheme of things in our country".

27.116. On 10th October, 1949, a debate took place in the Constituent Assembly on the safeguards to be inserted in the Constitution for the officers of All India Services. There was considerable opposition to these proposals; disparaging remarks were made about the Indian Civil Service; and the Constituent Assembly was reminded that members of the All India Services had been parties to arresting and detaining freedom fighters. The debate showed that the failure to establish a proper relationship between Ministers and Civil Servants had arisen soon after India gained independence. The far ranging vision of Sardar Vallabhbhai Patel saw the danger and in a speech of remarkable courage, passion and power he sought to avert the grave consequences of a subservient and servile Civil Service. He said:

"I wish to place it on record in this House that if, during the last two or three years, most of the members of the Services had not behaved patriotically and with loyalty, the Union would have collapsed. Ask Dr. John Mathai. He is working for the last fortnight with them on the economic question. You may ask his opinion. You will find what he says about the Services. You ask the Premiers of all

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provinces. . Is there any Premier in any province who is prepared to work without the Services ? He will immediately resign. He cannot manage..... If you want an efficient all India service, I advise you to allow the services to open their mouth freely. If you are a Premier it would be your duty to allow your Secretary, or Chief Secretary, or other service working under you, to express their opinion without fear or favour. But I see a tendency today that in certain provinces the services are set upon and told 'No, you are servicemen, you must carry out our orders'. The Union will go - you will not have a united India, if you have not a good all India service which has the independence to speak out its mind, which has a sense of security that you will stand by your word and that after all there is the Parliament, of which we can be proud, where their rights and privileges are secure. If you do not adopt this course, then do not follow the present Constitution. . Substitute something else. (italic supplied)"

His speech hushed the opposition to silence, and all amendments were rejected. But his warning as to the right relations between Ministers and Civil Servants was to go unheeded.

27.117. In the 1960s, the Government of India appointed an Administrative Reforms Commission under the distinguished Chairmanship of Mr. Morarji Desai. The present writer was invited to give evidence before that Commission, and on a question being put to him, he told the Commission that it was essential for the proper working of the civil service that there should be no ministerial interference in the day-to-day administration of the Department. It was for the Ministers to lay down the policy and for the heads of Departments to carry it out. No one should be permitted to go over the head of any Department to the Ministers, for, in that event, the morale of the Department would be destroyed, it being realised that the head of the Department had no control over its working. The present writer suggested the formation of a Council composed of 3 or 5 seriormost Ministers and 3 or 5 seniormost civil servants who would lay down the rules for the conduct of various Departments. Those rules would be accepted readily by Ministers and Civil Servants because of the composition of the Council. Problems arising out of the working of the rules could be evened out by periodical meetings. The following dialogue between the Chairman of the Commission and the present writer is instructive:

Chairman (Qn.): "Supposing the Minister does not obey the rules laid down ?

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Ans: "Then, the Chief Minister should sack him."
Qn.: "Supposing the Chief Minister does not sack him ?
Ans: "If you tell me that nobody is going to do his duty, I have nothing more to say."
In other words, Ministers were to be a law unto themselves."

13. The applicant in Tarlochan Dev Sharma vs. State of Punjab, AIR 2001 SC 2524, was successful in Municipal elections and was elected as President of the Rajpura Municipality. He was removed from his position after serving him a show cause notice. The Writ Petition failed. On appeal the Apex Court held:

"13. Although the appellant tried to suggest a case of mala fides and colourable exercise of power by stating a few facts and inviting a finding that impugned order was passed with an ulterior motive inasmuch as the appellant's election to the office of the President did not suit the power that be and the political bosses of Shri N.K. Arora, the then Principal Secretary, Department of Local Government, State of Punjab, however, we are not entering into that question as it is unnecessary and also because adequate material has not been brought on record and placed before the Court so as to undoubtedly arrive at such a finding. However, something has to be said about Shri N.K. Arora, Principal Secretary who initiated the action, heard the appellant and passed the impugned order of removal dated 1.10.1999.

14. It is interesting to view the present day bureaucrat politician relationship scenario, "A bureaucratic apparatus is a means of attaining the goals prescribed by the political leaders at the top. Like Alladin's lamp, it serves the interest of whosoever wields it. Those at the helm of affairs exercise apical dominance by dint of their political legitimacy..... The Ministers make strategic decisions. The officers provide trucks, petrol and drivers. They give march orders. The Minister tells

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them where to go. The officers have to act upon instructions from above without creating a fuss about it. (Effectiveness of Bureaucracy, the Indian Journal of Public Administration, April-June, 2000 at p. 165).

15. In the system of Indian Democratic Governance as contemplated by the Constitution senior officers occupying key positions such as Secretaries are not supposed to mortgage there own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. In Anirudhsinhji Jadeja (1995) 5 SCC 302: (1995 AIR SCW 3543: AIR 1995 SC 2390), this Court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this Court in the Purtabpur Company Ltd., AIR 1970 SC 1896, are instructive and apposite. Executive officers may in exercise of their statutory discretions take into account considerations of public policy and in some context policy of Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instruction by a superior to bind them. As already stated we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner in which the power under S. 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a

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Municipality under S. 22 of the Act. To say the least what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave at that and say no more on this issue." (emphasis added)

14. A Three Judge Bench of the Apex Court in Prakash Singh vs. Union of India, 2006 (8) SCC 1 has held:

"31. With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to above noted position, we issue the following directions to the Central Government, State Governments & Union Territories for compliance till framing of appropriate legislations:

"State Security Commission.

(1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police and for laying down the broad policy guidelines so that the State Police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee of the Sorabjee Committee, which are as under:

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NHRC	*Ribeiro Committee*	*Sorabjee Committee*
1. Chief Minister/ HM as Chairman	1. Minister i/c Police as Chairman	1. Minister i/c Police (ex-officio Chairperson).
2. Lok Ayukta or, in his absence, a retired judge of High Court to be nominated by the Chief Justice or a Member of the State Human Rights Commission.	2. Leader of Opposition.	2. Leader of Opposition.
3. A sitting or retired judge nominated by the Chief Justice of the High Court.	3. Judge, sitting or retired, nominated by the Chief Justice of the High Court.	3. Chief Secretary
4. Chief Secretary.	4. Chief Secretary	4. DGP (ex-officio Secretary).
5. Leader of Opposition in the Lower House.	5. Three non-political citizens of proven merit and integrity.	5. Five independent Members.
6. DGP as ex-officio Secretary.	6. DG Police as Secretary.	

The recommendations of this Commission shall be binding on the State Government.

The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service-oriented functions of the police, evaluation of the performance of the State Police and preparing a report thereon for being placed before the State Legislature."

15. The Hindu has published a supplement "Independent India" at 60 on 15th August. Nobel laureate Amartya Sen wrote the lead essay "India in the World". Relevant extracts are:

"What have we done over the last few decades to give shape to our global understanding of the world ? I fear the answer has to be; not much. A country that never liked being confined to just minding its "own business", seems now dedicated exclusively to that minding, pointedly excluding larger ideas and objectives. In fact, Indians seem to have become comprehensively sceptical of the "vision thing".

What discernment of a good world do our thinking and our policies reveal today, sixty years on, compared with where we stood, as we gained Independence".

We could have used the 1974 flexing of our nuclear muscle to generate more consistent pressure for denuclearisation of the world. We are now mainl preoccupied with sanitising 'our own' share of that deadly pie.

The alleged scepticism of the 'vision thing' is really an alternative vision - one that Gandhi and Tagore, even Nehru, would have found a little difficult to comprehend. We do of course exercise our voice in favour of the causes of a few developing countries. It is not easy to miss, in newspapers across the world, the picture of a smiling Kamal Nath as he walks out of the talks of the World Trade Organisation, joining forces with China, Brazil, and other movers and shakers in the economic world. But how extensive is our camaraderie ? Does our activist global role go beyond the coalition of the big economic entrants in the buying and selling of goods in the world market ?

Some would see this ethical near-vaccum in our global thinking as an inescapable result of the priorities of a market economy. It would, however, be hard to attribute our new moral apathy to the demands of the markets. Markets are, often enough, useful institutions, but they can hardly be responsible for determining our general philosophy, going well beyond their role as nice little organisational instruments."

(emphasis added)

16. The marginal reference to Rule 3 of AIS (Conduct) Rules as reproduced in Sarkar's The All India Service Manual (3rd edition , 2005 (reprint) shows that Rule 3 (i) was substituted vide Notification of 24.8.79 (GSR No.112 dated 8.6.79).

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It provides that every officer shall act in his best judgment except when he is acting under directions of official superior. Sub-rule 3 (ii) provides that such directions shall be in writing and where issue of oral orders is unavoidable it shall be confirmed in writing immediately thereafter. Sub-rule 3 (iii) provides that officer receiving oral direction shall seek confirmation as early as possible and in such case it shall be the duty of official superior to confirm it.

D.P. & A.R. OM dated 7.12.77 has been printed below this rule at pages 109-111. It conveys instructions regarding the points raised by staff regarding CCS(Conduct) Rules. Para 2.2 states that disciplinary authorities should first satisfy themselves that the alleged act of misconduct do not attract the provision of any specific rule before taking recourse to rule 3 (i). Special care is to be taken to eliminate cases of trival nature when action is taken under Rule 3 (i). Para 2.4 says that it is duty of superior officer to confirm the oral instruction in writing and he should not refuse to do so. It is open to him to say that no such instruction was given.

It also quotes instructions issued to State Govt. that they may consider the desirability of issuing instructions similar to those issued by GOI.

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in respect of oral orders given by senior officers/personal staff of Ministers in respect of AIS Officers under their control. Instructions issued in August 78, October, 78 and May, 88 are referred to.

17(a) The Fifth Central Pay Commission in Chapter 47 of its report had considered the matter relating to All India Services. Para 47.10 , 47.17, 47.19 and 47.20 are as under:-

> "47.10 There is no doubt that the All India Services have emerged as one of the principal instruments for upholding the unity and integrity of the nation. The Sarkaria Commission warned that any move to dilute their structure, net work or authority under any mistaken notion should be regarded as retrograde and harmful . We would like to draw attention to the fact that India is a large country of sub-continental size. We have a rich diversity of cultures and we are, by virtue of our size and population, almost fated to emerge as a regional power in the 21st century. Naturally, there are other forces which would like to thwart this rise and they have been hyperactive in fomenting dissensions, secessionist movements and trouble in vulnerable pockets of the country. We ,must not be overawed by administrative models that have worked well in small islands, the population of which may be equal to one of the districts of Uttar Pradesh. To keep India united, strong, democratic and free is not a small task. Only a network of AIS can insure us against disintegration."

> "47.17. <u>We come next to the phenomenon of the AIS Officers losing their willingness to be independent and objective in their advice to the political masters.</u> This weakening of the backbone has not happened suddenly or overnight. The methods used to tame a recalcitrant officer have been documented by numerous writers on the subject. The simplest method is to transfer him several times in a year. Although it is often said that transfer is an integral part of the

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service system and not a punishment, it is different when one has to pack up all one's belongings and readmit children to fresh schools several times in a year. If this technique does not work, suspension or a vigilance raid is resorted to. There are some examples of officers who have complained of murderous assaults, acid-throwing, etc. On the other side of the coin, one can think of several blandishments like cushy postings, foreign jaunts, allotment of plots and flats, use of discretionary quota for sending their wards to medical or engineering colleges and so on. The Vohra Committee has vividly described the nexus that has developed between unscrupulous elements in the political, bureaucratic and business worlds. Recent exposures of several scams also underline the same phenomenon. It is of the utmost importance that this nexus be broken and steps urgently taken to strengthen and even restore the backbone of the AIS officers."

"47.19. Another phenomenon used for taming the wilder elements in the AIS is the creation of ex cadre posts with high sounding titles, which are declared equal to some really powerful posts. For example, the post of Editor-in-Chief of Gazetter Unit may be declared as of Commissioner's rank, the chairmanship of a Boundary Commission may be equated to the post of Chief Secretary. Thus an upright officer suddenly finds himself overthrown and shifted to a sinecure, unimportant assignment where he has no work, no powers, no authority, nothing to do. There cannot be a more potent method of reducing a strong man into a weakling."

"47.20. It is recommended that prior written approval of the Central Government should be necessary, before an ex cadre AIS post of SAG and above is created by a State Government." (emphasis added)

(b) Having regard to recommendations of Fifth Central Commission, the UOI has fixed norms for conducting review of cadre strength and composition of State Cadre in case of IAS Officers vide its letter dated 27.01.05. The State Government have been given the flexibility to

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create ex cadre posts subject to the following :

(1) The number of ex cadre posts at the 26,000 (fixed) grade will not exceed the number of cadre post.

(2) The total number of persons on ex cadre posts ad Central deputation shall not exceed the CDR + SDR of the State.

(3) While the State will need to define the ex cadre posts at the time of the cadre review, they may at their discretion change the designation/posts upto 15% of designated posts.

18. Section 6 of the Commission of Enquiry Act employs the term civil proceedings. Mr.Patel learned counsel for the applicant has argued that departmental enquiry is also a civil proceeding. On a fundamental principle of law any proceeding , which is not a criminal proceeding, is a civil proceeding. It has further been held that any claim resulting in enforcement of personal rights, determination of status, etc. it would be a civil proceeding. Reliance is placed on decisions of Apex Court in S.A.L.Narayan (infra) and other decisions cited below:

Mr.Doctor, learned counsel for the respondents has on the other hand contended that the decisions of Calcutta High Court and Lahore High Court show that proceedings under the Legal Practitioners Act, which are also in the nature of departmental proceedings, are quasi criminal and hence neither

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civil non criminal in nature. It has been held by Apex Court that whether the proceedings are civil depends on the nature of right violated and appropriate relief which may be claimed and not on the nature of Tribunal. There is no violation of any right more particularly a civil right. There is no question of a party asserting existence of a civil right or breach thereof. Merely because an action results in civic consequences ultimately it does not change the nature of enquiry from quasi criminal to civil proceedings.

19. The respondents have placed reliance on the decision of Special Bench of Calcutta High Court and Lahore High Court to contend that disciplinary proceedings are neither Civil or Criminal proceedings. The Special Bench of Calcutta High Court in Emperor vs. Rajnikant Bose AIR 1922 Calcutta515 was considering four references under the Legal Practitioners Act 1879. Three separate judgments were recorded.

Justice Woodroffe held:

> "I am of opinion tat these proceedings are (as it has been contended and conceded), quasi criminal in the sense that they may result in penalties."

> "The true position appears to be that these proceedings are neither civil suits nor criminal prosecutions. They are special proceedings resulting from inherent power of the Courts over their officers. Their object is to preserve the purity of the Courts

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and the proper and honest administration of law."

Lahore High Court in Lakshmi Narayan vs. Mr.Ratni AIR 1976 Lahore 199 was considering the matter relating to charge of misconduct under the Legal Practitioner Act. The Chief Justice held:

> "There can be no doubt that a proceeding under the Act is not a civil proceeding, and the provisions of the Civil P.C. are wholly inapplicable to a case of this description. Nor do I think that an enquiry into the conduct of a pleader can be treated as a criminal proceeding, though being penal in its nature it resembles in many respects a criminal case.
>
> The learned counsel for the applicant, however, invokes. S.526 of the Criminal Procedure Code, and contends that as Act XVIII of 1923 has now amended the action by omitting the word"criminal which occurred in Cl.(11) of sub-S (1) thereof, the present proceeding comes within the ambit of that section. There can be no doubt that under the old la there was a conflict of opinion as to whether a case under Chapter VIII or under S.145 of the Code could be called a criminal case, but all doubt on this subject has now been set as rest by deleting the word "criminal" from S.526. The scope of the section has now been considerably enlarged, and every case tried by a criminal Court comes within the purview of the amended section. There is, therefore, considerable force in the contention that the present enquiry under S.14 of the Legal Practitioners Act which is being conducted by a Magistrate, constitutes a "case" within the meaning of the section."

20. The Advocates Act has consolidated the law and repealed the Legal Practitioners Act and Bar Councils Act 1926. Chapter V contains provisions regarding conduct of advocates. Powers to discipline advocates were given to State Bar Council and Bar Council of India. Appeals against

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orders of Bar Council of India lie before the Apex Court.

Section 50 of Advocate's Act 1961 provides for repeal of certain enactments. Section 50(4) provided that on the date chapter V came into force .Section 12 to 15, 21 to 24 , 39,40 and so much of Sections 16,17 & 41 of the Legal Practitioners Act as it related to suspension, removal or dismissal of legal practitioner would stand repeal. The subsequently inserted Section 58 B provided for transfer of existing proceedings to State Bar Council.

21. AIR Manual (6th edition) cites under Heading 13 Evidence and proof ~~under~~ in Note 23 below Section 35, the following under sub heading Legal Practitioners Act 1879: standard and degree of proof required under the Act is same as in criminal trial. AIR 1920 Pat.14(85): 21 Cri LJ 636 (FB)**AIR 1959 Orissa 1 (3) SB.

Note 13 below Heading 1. Professional & Other misconduct -General reads:

(13) Section 35 is no bar for Commission of Inquiry appointed under S.3 of Commissions of Inquiry Act (1952) from inquiring into and giving its finding regarding the conduct of an Advocate in relation to

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the incident referred to it for inquiry.

22. The Apex Court in Re: An Advocate AIR 1989 SC 245 has held:

> "As for the procedure followed by the State Bar Council at the Enquiry against the appellant, in the instant case is concerned, it appears that in order tot enable the concerned advocate to defend himself properly, an appropriate specific charge was required to be framed. No doubt the Act does not outline the procedure and the Rules do not prescribed the framing of a charge. But then even in a departmental proceeding in an enquiry against an employee, a charge is always framed. Surely an Advocate whose honour and right to earn his livelihood are at stake can expect from his own professional brethren, what an employee expects from his employer. Even if the rules are silent, the paramount and overshadowing considerations of fairness would demand the framing of a charge. It would be extremely difficult for an Advocate facing a disciplinary proceeding to effectively defend himself in the absence of a charge framed as a result of application of mind to the allegations and to the question as regards what particular elements constituted a specified head of professional misconduct. The point arising in the context of the nonframing of issues has also significance. Rule 8(1) enjoins that "the procedure for the trail of Civil suits, shall as far as possible be followed."Framing of the issues based on the pleadings as in a Civil suit would be of immense utility. The controversial matters and substantial questions would be identified and the attention focussed substantial factual and legal matters in contest. The parties would then become aware of the real nature and content of the matters in issue and would come to know (1) on whom the burden rests (2) what evidence should be adduced to prove or disprove any matter (3) to what end cross examination and evidence in rebuttal should be directed. When such a procedure is not adopted there exists inherent danger of miscarriage of justice on account of virtual denial of a fair opportunity to meet the case of the other side.

The conclusion reached by the Disciplinary

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Committee in the impugned order further shows that in recording the finding of facts on the three question, the applicability of the doctrine of benefit of doubt and need for establishing the facts beyond reasonable doubt were tot realised. Nor did the Disciplinary Committee consider the question as to whether the facts establishes that the appellant was acting with bona fides or with mala fides, whether the appellant was acting with any oblique or dishonest motive, whether there was any mensrea, whether the facts constituted negligence and if so whether it constituted culpable negligence. Nor has the Disciplinary Committee considered the question as regards the quantum of punishment, the exact nature of the professional misconduct established against the appellant. The impugned order passed by the Disciplinary Committee, therefore, cannot be sustained"

23. Article 132 to 136 of the Constitution contains provisions relating to Appellate Jurisdiction of Apex Court. Article 132 of provides that an appeal shall lie from any judgment, decree in a civil, criminal or other proceedings if the High Court certifies that case involves a substantial question of law as to interpretation of Constitution. D.D. Basu in his 'A Shorter Constitution of India' (12th edition, 1999 Reprint) writes on page 367 that the expression "other proceedings" would thus include proceedings other than civil and criminal proceedings, e.g., revenue proceedings under the Sales Tax Act, Income Tax Act, proceedings for disciplinary action against lawyers. Reference is given to decision in Narayan vs. Ishwar.

Article 133 provides for appeals from any judgment, decree or final order in a civil

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proceedings under the circumstances mentioned therein. D.D. Basu writes at page 377 that decree in a suit challenging an order of dismissal is appealable under this articles. Reference is given to the decision in Kartar Singh vs. State of Punjab 1991 (2) SCC 635.

Article 134 provides for appellate jurisdiction in criminal cases. D.D.Basu refers to decision in Narayan vs. Ishwar at page 391 to say that proceedings for exercise of disciplinary jurisdiction against lawyers or other professionals may not fall within the classification of proceeding-civil or criminal. Article 134 A provides for certificate for appeal to the Supreme Court under Articles 132 to 134. Article 136 provides for special leave to appeal by the Apex Court.

Article 131 provides for original jurisdiction of Apex Court. Article 135 provides for exercise of powers of Federal Court in respect of matter not covered by Article 133 & 134 until Parliament enacts a Legislation.

24. The Constitution Bench in S.A.L Narayan Rao & Anrs. vs. Ishwar Lal Bhagwan Das & Anrs., AIR 1965 SC 1818 was considering the question that whether the proceedings before the High Court under Article

226 in the matter of recovery of Income Tax are civil proceedings within the meaning of Article 133 (1)(c) of the Constitution.

Two separate judgments were recorded. J. Shah recorded ~~the judgment on behalf~~ of CJI and other 3 judges including himself. Relevant part of the judgment reads as under:

> "(7) This Court is invested by the Constitution with appellate jurisdiction of great amplitude exercisable over all Courts and tribunals in India. The jurisdiction may be exercised in respect of any judgment, decree, determination, sentence or order in any cause or matter passed by any court or tribunal other than a judgment, determination, sentence or order made or passed by any court or tribunal under any law relating to the Armed Forces; Art. 136. Exercise of this power depends solely upon the discretion of the Court.
>
> (8) Counsel for the assessee said that proceedings instituted in the High Court in exercise of its jurisdiction - original or appellate - may be broadly classified as (i) proceedings civil, (ii) proceedings criminal, and (iii) proceedings revenue, and where the case does not involve a substantial question as to the interpretation of the Constitution, from an order passed in a proceeding civil, an appeal lies to this Court with certificate granted under Art. 133 of the Constitution, and from a judgment, final order or sentence in a criminal proceeding an appeal lies with certificate granted under Article 134 of the Constitution, but from an order passed in a proceeding relating to revenue the right of appeal may be exercised only with leave of this Court. Counsel seeks support for this argument primarily from the pharaseology used in Art. 132 of the Constitution. That Article, by its first clause, provides:
>
> "An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the

case involves a substantial question of law as to the interpretation of this Constitution."

Counsel relies upon the classification of proceeding made in Art. 132(1) and seeks to contrast it with the phraseology used in Arts. 133(1) and 134(1). He says that "other proceeding" in Art. 132(1) falls within the residuary class of proceedings other than civil or criminal and such a proceeding includes a revenue proceeding. The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of Court and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal. But there is no warrant for the view that from the category of civil proceedings, it was intended to exclude proceedings relating to or which seek relief against - enforcement of taxation laws of the State. The primary object of a taxation statute is to collect revenue for the governance of the State or for providing specific services and such laws directly affect the civil rights of the tax-payer. If a person is called upon to pay tax which the State is not competent to levy, or which is not imposed in accordance with the law which permits imposition of the tax, or in the levy, assessment and collection of which rights of the tax-payer are infringed in a manner not warranted by the statue, a proceeding to obtain relief whether it is from the tribunal set up by the taxing statute, or from the civil court would be regarded as a civil proceeding. The character of the proceeding, in

our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is therefore one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc.

(11) By a petition for a writ under Art. 226 of the Constitution, extraordinary jurisdiction of the High Court to issue high prerogative writs granting relief in special cases to persons aggrieved by the exercise of authority - statutory or otherwise - by public officers or authorities is invoked. This jurisdiction is undoubtedly special and exclusive, but on that account the nature of the proceeding in which it is exercised is not altered. Where a revenue authority seeks to levy tax or threatens action in purported exercise of powers conferred by an Act relating to revenue, the primary impart of such an act or threat is on the civil rights of the party aggrieved and when relief is claimed in that behalf it is a civil proceeding, even if relief is claimed not in a suit but by resort to the extraordinary jurisdiction of the High Court to issue writs.

(16) On a careful review of the provisions of the Constitution, we are of the opinion that there is no ground for restricting the expression "civil proceeding" only to those proceedings which arise out of civil suits or proceedings which are tried as civil suits, nor is there any rational basis for excluding from its purview proceedings instituted and tried in the High Court in exercise of its jurisdiction under Article 226, where the aggrieved party seeks relief against infringement of civil rights by authorities purporting to act in exercise of the powers conferred upon them by revenue statutes. The preliminary objection raised by counsel for the assesses must therefore fail." (emphasis added)

26. The Constitution Bench of Apex Court in Ramesh

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& Anrs. vs. G.M. Patni & Ors., AIR 1966 SC 1445 held:

"(9) Article 133 must cover all civil proceedings because no exception is indicated. The question is whether the proceedings in the High Court can be described as civil proceedings. The High Court in the present case was invited to interfere by issuing writs of certiorari and prohibition against the reopening of the case in which the Claims Officer had discharged a debt due to the answering respondent. The revenue authorities in such matters act analogously to civil courts, have a duty to act judicially, and pronounce upon the rights of parties. In the present case the Claims Officer purported to exercise a jurisdiction under which he could order the discharge of a debt which means that the order affected the civil rights of the parties. The Commissioner's order reversing the order of the Claims Officer also affected the same civil rights of the parties. The proceedings before the revenue authorities thus were concerned with the civil rights of two contending parties. They were civil proceedings. The proceedings in the High Court must also be regarded as of the same nature. The term civil proceeding has been held in this Court to include, at least all proceedings affecting civil rights, which are not criminal. The dichotomy between civil and criminal proceedings made by the Civil Law Jurists is apparently followed in Arts. 133 and 134 and any proceeding affecting civil i.e., in private rights, which is not criminal in nature, is civil. This view was expressed recently by this Court in Narayan Row v. Ishwarlal Bhagwandas, AIR 1965 SC 1818, Shah J., speaking for the majority, first summarises all the provisions in the Constitution bearing upon appeals to this Court and after analysis, holds that the words "civil proceeding" are used in the widest sense, that in contradistinction to criminal proceedings they cover all proceedings which affect directly civil rights. A proceeding under Article 226 for a writ to bring up a proceeding for consideration must be a civil proceeding. If the original proceeding concerned civil rights. Here the civil rights of the parties were directly involved and the proceeding before the High Court was thus a civil proceeding. The first requisite for the application of Art. 133(1) is thus satisfied." (emphasis added)

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26. A Three Judge Bench of the Apex Court in Arbind Kumar vs. Nandkishore AIR 1968 SC 1227 was considering the question as to certificate under Article 133 could be granted in respect of a matter relating to grant of permit under M.V. Act. The Apex Court held:

> "(3) The plea raised by counsel for the respondent that the appeal was liable to be dismissed because the High Court was incompetent to grant a certificate of fitness under Art. 133(I)(a) or Art. 133(1)(b) of the Constitution against the judgment of the High Court exercising extraordinary original jurisdiction under Art. 226 of the Constitution is without substance. This Court has held in S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 = (AIR 1965 SC 1818) that the words 'civil proceeding' used in Art. 133 of the Constitution cover all proceedings which directly affect civil rights. A proceeding under Art. 226 of the Constitution for a writ to bring up a proceeding for consideration concerning civil rights is therefore a civil proceeding. This Court has further held in Ramesh v. Gendalal Motilal Patni, (1966) 3 SCR 198 = (AIR 1966 SC 1445) that the High Court is competent to certify on appeal against an order passed by a Division Bench of a High Court in exercise of extra-ordinary original jurisdiction under Art. 226 of the Constitution if the dispute decided thereby concerns civil rights of the parties. Hidayatullah, J. speaking for the Court observed at p. 203 (of SCR) = at p. 1448 of AIR).
>
> "Mr. Gupta's contention that under that article (Art. 133) an appeal can only lie in respect of a judgment or decree or final order passed in the exercise of appellate or ordinary original civil jurisdiction but not of extraordinary original civil jurisdiction is not right. **** Article 133 not only discards the distinction between appellate and original jurisdiction but deliberately used words which are as wide as language can make them. The intention is not only to include all judgments, decrees and orders passed in the exercise of appellate and ordinary original civil jurisdiction but also to make the language wide enough to cover other jurisdictions under which civil rights would come before the High Court for

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decision."

The plea raised by counsel for the respondent that the High Court was not competent to grant the certificate must therefore be rejected."

27. The Apex Court in Most Rev. P.M.A Metropolitan & Ors., etc. etc. vs. Moran Mar Marthoma & Another, AIR 1995 SC 2001 was considering the explanation below Section 9 of CPC. Justice R.M.Sahai held:

"28. Each word and expression casts an obligation on the Court to exercise jurisdiction for enforcement of right. The word 'shall' makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section. That is amplified by use of expression, 'all suits of civil nature'. The word 'civil' according to dictionary means, 'relating to the citizen as an individual; civil rights'. In Black's Legal Dictionary it is defined as, 'relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings'. In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc., were added to it later. But they too pertain to the larger family of 'civil'. There is thus no doubt about the width of the word 'civil'. Its width has been stretched further by using the word 'nature' along with it. That is even those suits are cognisable which are not only civil but are even of civil nature. In Article 133 of the Constitution an appeal lies to this Court against any judgment, decree or order in a 'civil proceeding'. The expression came up for construction in S.A.L. Narayan Row v. Ishwarlal Bhagwandas, AIR 1965 SC 1818. The Constitution Bench held 'a proceeding for relief against infringement of civil right of a person is a civil proceeding'. In Arbind Kumar Singh v. Nand Kishore Prasad, AIR 1968 SC 1227 "it was held to extend to all proceedings which directly affect civil rights". The dictionary meaning of the word 'proceedings' is 'the institution of a legal action, 'any step taken in a legal action'. In Black's Law Dictionary it is explained as, 'In a general sense, the form and manner of conducting juridical business before a Court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from

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its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like". The word 'nature' has been defined as 'the fundamental qualities of a person or thing; identity or essential character; sort; kind; character. It is thus wider in content. The word 'civil nature' is wider than the word 'civil proceeding'. The Section would, therefore, be available in every case where the dispute has the characteristic of affecting one's rights which are not only civil but of civil nature." (emphasis added)

The judgment written by Justice B.P. Jeevan Reddy on behalf of himself and other brother Judge has not expressed any opinion on this point.

28. The report of the judgment in Kartar Singh vs. State of Punjab 1991 (2) SCC 635 shows it as a Civil Appeal. The appeal had been preferred against the judgment of Punjab & Haryana High Court in the second appeal. The applicant had challenged the order dismissing him in Civil Court.

29. The Apex Court in Mithilesh Kumari & Anrs. vs. P.B. Khare, AIR 1989 SC 1247 held:

"Where a particular enactment or amendment is the result of recommendation of the Law Commission of India, it may be permissible to refer to the relevant report. What importance can be given to it will depend on the facts and circumstances of each case. However, the Court has to interpret the language used in the Act, and when the language is clear and unambiguous it must be given effect to. Law Commission's Reports may be referred to as external aid to construction of the provisions."

(paras 15, 19)

"A right is a legally protected interest."

(Para 22)

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30. The Apex Court in Mr.'X' vs. Hospital 'Z', 1998 (9) Supreme Court 220 held:

> "14. "RIGHT" is an interest recognised and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty. That is how Salmond has defined the "Right". In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The elements of a "LEGAL RIGHT" are that the "right" is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the right. If, therefore, there is a legal right vested in a person, the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right."

31. The Constitution Bench in M.S. Gill vs. The Chief Election Commissioner, AIR 1978 SC 851 held:

> "65. Of course, we agree that if only spiritual censure is the penalty temporal laws may not take cognisance of such consequences since human law operates in the material field although its vitality vicariously depends on its morality. But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps ? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.
>
> 'Civil' is defined by Black (Law Dictionary, 4th Edn.) at p. 311):
>
> "Ordinally, pertaining or appropriate to a member of a civitas of free political community; natural or proper to a citizen. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.
>
> The word is derived from the Latin civilis, a citizen ..... In law, it has various significations.

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'Civil Rights' are such as belong to every citizen of the State or Country or in a wider sense to all its inhabitants and are not connected with the organisation or administration of government. They include the rights of property, marriage protection by the laws, freedom of contract, trial by jury, etc.... or, as otherwise defined civil rights are rights appertaining to a person in virtue of his citizenship in a State or, community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the Constitution and by various acts of Congress made in pursuance thereof.

66. The rulings cited, bearing on the touchstone of civil consequences, do not contradict the view we have propounded. Col. Sinha (AIR 1971 SC 40) merely holds - and we respectfully agree - that the lowering of retirement age does not deprive a government servant's rights, it being clear that every servant has to quit on the prescribed age being attained. Even Binapani (AIR 1967 SC 1269) concedes that the State has the authority to retire a servant on superannuation. The situation here is different. We are not in the province of substantive rights but procedural rights statutorily regulated. Sometimes processual protections are too precious to be negotiable, temporised with or whittled down."

32. A Three Judge Bench in D.K. Yadav vs. JMA Industries Ltd., 1993 (3) SCC 259 has held:

"9..... Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country .... they include ... rights capable of being enforced or redressed in a civil action ...."

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, ...

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fanciful or oppressive."

33. The Constitution Bench in Roshan Lal Tandon vs. Union of India, AIR 1967 SC 1889 held:

"6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unflaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement

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between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

"So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status." (Salmond and Williams on Contracts, 2nd edition, p.12).

(7) We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case."

34. The Apex Court in BHEL vs. B.K. Vijay, (2006)2 SCC 654 has held:

"15. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn., Vol. 4, at p. 4469, the expression "status" has been defined as under:

"Status is a much discussed term which, according to the best modern expositions, includes the sum total of a man's personal rights and duties (Salmond, Jurisprudence 253, 257), or, to be verbally accurate, of his capacity for rights and duties (Holland, Jurisprudence 88).

The status of a person means his personal legal condition only so far as his personal rights and

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burdens are concerned. Duggamma v. Ganeshayya, AIR at p. 101. (Indian Evidence Act (1 of 1872), Section 41.)

In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. (Roshan Lal Tandon v. Union of India.).

16. The said expression has been defined in Black's Law Dictionary meaning:

"Standing; state or condition; social psotion. The legal relation of individual to rest of the community. The rights, duties, capacities and incapacities which determine a person to a given class. A legal personal relationship, not temporary in its nature nor terminable at the mere will of the parties, with which third persons and the State are concerned."

17. Only because a person is given a particular status, the same would not mean that his other terms and conditions of service would not be governed by the contract of employment or other statute(s) operating in the filed. We may notice that a three-Judge Bench of this Court in Indian Petrochemicals Corpn. Ltd v. Shramik Sena observed as under: (SCC p, 449, para 22)

(W)e hold that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes."

35. We have noted in para 23 above that Article 132 provides for appeal to Supreme Court in cases the High Court certifies that the case ~~involved~~ involves substantial question of law to the interpretation of this Constitution. It refers to criminal, civil and other proceedings. The word "other proceedings" as explained in D.D.Basu Short Dictionary includes proceedings under legal Practitioner's Act.

As against this article, Article 133 and

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134 provide for appeal from Civil and Criminal Proceedings in the circumstances mentioned therein. We have referred to the comments under Article 133 that decree in a suit challenging an order of dismissal is an appealable order. The fact that decision in Kartar Singh has been given in Civil Aoppeal and not SLP is noted in para 28 above.

36. The appeal in Narayan (supra) had arisen out of Writ petition filed in a revenue proceedings. The preliminary objection was that it cannot be treated as a civil proceeding within th meaning of Article 133 and hence a certificate could not have been granted. It was specifically noted that proceedings for contempt of Court and for exercise of disciplinary jurisdiction against lawyers or other professionals such as Chartered Accountant may not fall within the Classification of Civil or Criminal. The preliminary objection was rejected. This decision is referred to in Ramesh to hold that the words "Civil Proceedings" are used in the widest sense, i.e. in contradistinction to all criminal proceedings.

The Apex Court in Ramesh & Another (supra) has held that Article 133 covers all Civil Proceedings no exceptions are indicated. This term has been held in this Court to include all proceedings

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affecting civil rights which are not criminal. The dichotomy between Civil & Criminal Proceedings is apparently followed in Article 133 & 134 and any proceedings affecting Civil i.e. in private rights, which is not criminal in nature is civil. The view expressed in Narayan is referred to. As the writ had arisen out of adjudication of claims regarding debt, i.e. an order affecting civil rights, it was held that the appeal lies . It was held in Arbind Kumar that certificate could be granted in a Writ Petition arising out of grant of permit under M.V.Act. Justice Sahay in Most Rev.RMA Metropolitan (supra) has referred to definition given in Black's dictionary. Even administrative proceedings have been included . He also held that Section 9 of CPC is attracted even in those cases where the dispute has the characteristic of civil nature.

37. The Apex Court in X - vs. Z - has held that right is an interest recognised and protected by moral or legal rules. The elements of a legal right are that the right is vested in a person and is available against a person who is under corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the right. The Apex Court in Mithilesh Kumari has held right as a legally protected interest.

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The decision in M.S.Gill (surpa) shows that a civil right is one which a person enjoys by being a citizen of a State and or a community and rights being capable of enforced or redressed in a civil action. This position was reiterated in D.K.Yadav (supra).

The Apex Court in Roshan Lal (supra) has held that while the origin of Govt. servant is contractual but on being appointed to a post or office he acquires his rights and obligations and they are no longer determined by consent but by statute or statutory rules which may be framed and altered unilaterally. The duties of status are fixed by law and in the enforcement of these duties society has an interest. K.K.Vijay (supra) also refers.

38. Chapter XII of THE RAILWAYS ACT, 1989 contains provisions regarding enquiries in case of accidents S.119 provides that if a Commission of Inquiry has been set up other enquiries shall not be proceeded and documents forwarded to authority specified in the behalf Section 117 of the Act is identical to Section 6 except for the following:

(i) The word Commissioner is used in placed of Commission, and

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(ii) The verb "is" appears in the first line of proviso after 'statement' and not in the beginning of sub clause (i) & (ii) below it.

The book written by R.P.Kataria and published by Orient Publishing Company refers to the above decision in S.A.L.Narayan Rao under Section117 under note 2 "civil proceeding"- Meaning of ....

39. Mr.Doctor, learned counsel for the applicant had placed reliance on the decision of Calcutta and Lahore High Court to contend that the disciplinary proceedings against lawyer are neither criminal nor civil proceedings. They are quasi criminal in nature. It is argued that there can be a class of proceeding other than civil or criminal proceedings.

The said act has since been repealed by the Advocates Act 1961 and the powers of disciplinary authority vis-a-vis an advocate has been ~~referred~~ conferred on the bar councils. Section 37 of the Act an appeal against the orders passed by State Bar Council lies to Bar Council of India. Bar Council of India can also take action under Section 36 of Advocates Act . An appeal from orders passed by Bar Council of India Under Section 36,37 lies to Apex Court. The Act was subsequently amended to

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transfer even the existing proceedings before the High Court. The Apex Court in Re: An Advocate (supra) has explained the nature of proceedings against a lawyer under the Advocates Act. The Apex Court in Narayan (supra) has classified certain proceedings as not belonging to either criminal or civil. It includes lawyers and other professional classes.

40. We are accordingly of the view that the decisions cited by the respondents are clearly distinguishable.

41. Having regard to the above discussions we hold that disciplinary proceedings are civil proceedings within the meaning of Section 6 of Commission of Inquiry Act.

42. AIR Manual (6th edition 2004) shows that Commission of Enquiry Act 1952 has been subsequently amended by Act 1979 of 1971, Act 36 of 86, Act 63 of 88 and Act 19 of 1990. The statement of objects and reasons of Act 79 of 71 shows that Law Commission had undertaken a comprehensive review of the entire act and made a number of recommendations in its 24th report. The views of State Government were obtained and the main recommendations were accepted. A bill was

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introduced but the same was referred to joint Selection Committee. The bill was to give effect to recommendations of Joint Select Committee with minor modifications.

43. The learned counsel for the applicant has made available the report of the 24th Law Commission. He has placed reliance on para 7,12(1) and 12(2) of the report. Para 1,2,33(1) and these paragraphs read as under:-

(a) The working of the laws relating to inquiries by Commissions or Tribunals in various countries has revealed several defects and draw backs.

"1. The circumstances in which the Commissions of Inquiry Act, 1952, was referred to the Law Commission may be briefly stated. Section 5(2) of the Act authorises a commission of inquiry to require any person to furnish information useful for, or relevant to, the matters under inquiry. No penalty is provided in the Act for disobedience to such a requisition, and the Press Commission, constituted under the Act, appears to have experienced some difficulty in collecting the required information. Government had, therefore, referred this matter to us for examination. Taking into account the importance of the Act and the need for a proper system of inquiries, we have, instead of confining ourselves to the specific points referred to us, preferred to undertake a comprehensive examination of the entire Act in the light of the working of the Act during the last ten years, the practice in other countries in relation to inquiries, and the vast though-provoking literature on the subject.

2. The Commissions of Inquiry Act, 1952 was enacted after due consultation with State Government to facilitate the setting up of commissions with requisite

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powers to inquire into a report on any matter of public importance. Government realised, on the basis of its previous experience, that the expedient of promoting special legislation for setting up a commission of inquiry each time the need for it arose involved a tardy process which more often than not ended in the withdrawal of the proposals for inquiry. On the other hand Government felt convinced of the utility of such inquiries as a means of arriving at a proper appraisal of matters of public importance and of infusing the confidence of the public in its administration and conduct. As the necessity for such inquiries was bound to be a recurring one, it was felt advantageous to have an enactment generalising the powers which commissions of inquiry may exercise and leaving it to the Government to constitute a commission as and when necessary. Such, in short, is the genesis of the Commissions of Inquiry Act, 1952.

7. Thirdly, a Commission may virtually lead a person to make self-incriminating statements. In regard to the procedure adopted by the investigating committee of the American Congress into the gambling activities of one Nelson, Judge David Bezelon remarked caustically thus:

> "Nelson's freedom of choice has been dissolved in a brooding omnipresence of compulsion. The Committee threatened prosecution for contempt if he refused to answer, for perjury if he lied and for gambling activities if he told the truth".

Fourthly, inasmuch as a Commission may receive hearsay evidence at second-hand or third-hand, its findings on the conduct of persons involved in the case may cause irretrievable damage to those persons and may even ruin them for life. In this connection, a passage from the speech in the House of Commons of Sir Alfred Butt who was involved in the "Budget Leakage Inquiry" in 1936 may be quoted:

> "I would ask right hon. and hon. Members to visualise the position in which I now find myself. I have been condemned, and apparently I must suffer for the rest of my life from a finding against which there is no appeal, upon evidence which apparently does not justify a trial, and there is now no method open to me by which I can bring the true and full facts, before a jury of my fellow-men..... If any good may come from this,

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the most miserable moment of my life, I can only hope that my position may do something to prevent any other person in this country being subject to the humiliation and wretchedness which I have suffered, without trial, without appeal and without redress."

Finally, in a number of cases inquiries may not result in any tangible results. Thus in england no prosecution seems to have ever been launched as a result of a tribunal of inquiry and the position seems to be hardly different in our country.

12(1) Secondly, it has been suggested to us by Judges who have presided over some Commissions of Inquiry that the Commission should have power to punish for contempt. It seems that in the past, some members of Commissions of Inquiry have been subjected to scurrilous attacks in the press and elsewhere but the Commissions have not been able to punish them. It is contended that no Commission of Inquiry can effectively function if its authority is flouted or irresponsible comments are made in the press and elsewhere during the course of the inquiry on the personnel of the Commission or on the subject-matter of the Inquiry. We are, however, faced in this matter with a Constitutional difficulty. In the case of Dalmia v. Mr. Justice Tendolkar and others, the Supreme Court has held that a Commission appointed under the Act does not perform any judicial functions. In the words of the Supreme Court,

"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....."

(2) A Commission under this Act merely ascertains facts. It does not decide any dispute. There are no parties before the Commission. There is no 'lis'. As

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Lord Dhawcross has said in the case of the analogous Tribunal in England, "the procedure of the Tribunal is inquisitional rather than accusatorial".

In fact, it has already been held by the Nagpur High Court in the case of Rajwade v. Hassan that a Commission appointed under the Commissions of Inquiry Act, 1952, is not a court within the meaning of section 3 of the Contempt of Courts Act, 1952.

33(1) While discussing the procedure to be followed by the Commission, we have recommended the incorporation of rules 4 and 5 (with suitable modifications) in the Act itself. We recommend that section 8 be suitably amended in this behalf."

(b) Para 8 of the report examines the question as to whether the Act should remain on the statute book. It answers the question in the affirmative and quotes Lord Chancellor, viscount Kilmur defence in House . The relevant part of this reply reads:

"8..... In all those cases the question of discovering what has actually happened is of prime importance..... After the true facts have been found and stated it may be necessary to stigmatise conduct which, although not a criminal offence or a civil wrong, falls short of the requisite standards of our public life. It may be necessary to kill harmful rumours which are found to be unjustified. It may be necessary - and this I am sure was very much in the minds of the Government who introduced this measure - to restore public confidence in public conduct and administration. These ends may well be of such importance to the life of the nation as to justify means which inflict hardship on individuals."

(c) The Commission further observed:

"It is true that in some cases, the Government does not take any action on the report of a Commission of Inquiry. But that does not mean that the inquiry has not been useful. The Commission either exonerates the persons involved in the enquiry or holds them guilty. In either case the inquiry serves a useful

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purpose. In the first case, the inquiry sets at rest some ugly rumours which led to the appointment of the Commission. In the second case, the guilty persons are exposed to the public eye. A prosecution is not the only method of punishing persons who pollute the pure springs of public administration. Many persons would prefer to suffer a sentence in secret rather than face the public with their dark deeds. The glaring publicity which attaches to such inquiries is both its strength and its weakness. Such publicity exposes the wrong-doers to the public eye and there lies its strength....." (emphasis added)

44. The Constitution Bench in Ramkrishna Dalmia vs. Justice Tendolkar, AIR 1958 SC 541 was considering appeals from decisions of Division Bench of Mumbai High Court declaring the notification issued under Section 3 of Commission of Enquiry except last part of Clause (10) as valid in law. The Constitution Bench, among others, held:

"It is, in our judgment, equally ancillary that the person or body conducting the inquiry should express its own view on the facts found by it for the consideration of the appropriate Government in order to enable it to take such measure as it may think fit to do. The whole purpose of setting up of a Commission of Inquiry consisting of experts will be frustrated and the elaborate process of inquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures the situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view the recommendations of a Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. From this point of view, there can be no objection even to the Commission of Inquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquents in future. But

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seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective *proprio vigore* and the statement made by any person before the Commission of Inquiry is, under S. 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal there can be no point in the Commission of Inquiry making recommendations for taking any action "as and by way of securing redress or punishment" which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a Court of law properly constituted exercising its own discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body, however august or high powered it may be."
(Underlined portion cited in Kehar Singh)

45. The Constitution Bench in State of J&K vs. Bakshi Ghulam Mohammed and others, AIR 1967 SC 122 was considering an appeal from the decision of J&K High Court. The High Court had quashed the notification setting up a Commission of inquiry to enquire into assets and pecuniary resources etc., of respondent. The Apex Court amongst other held:

"(14) The next point against the validity of the Notification was based on S.10 of the Act which is in these terms:-

"10.(1) If at any stage of the inquiry the Commission considers it necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and producing evidence in his defence:

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

(2) The Government, every person referred to in sub-section (1) and with the permission of the Commission, any other person whose evidence is recorded

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by the Commission-

(a) may cross-examine any person appearing before the Commission other than a person produced by it or him as a witness.

(b) may address the Commission.

(3) * * * *

It was contended that it showed that an inquiry may be made under the Act into the conduct of a person only incidentally, that is to say, it can be made only when that becomes necessary in connection with an inquiry into something else. It was, therefore, contended that the present inquiry which was directly into the conduct of Bakshi Ghulam Mohammad was outside the scope of the Act. It was also said that S. 10 gives a statutory form to the rules of natural justice and provides for the application of such rules only in the case when a person's conduct comes up for inquiry by the Commission incidentally. It was then said that the Act could not have contemplated an inquiry directly into the conduct of an individual since it did not provide specifically that he should have the right to be heard, the right to cross-examine and the right to lead evidence which were given by S. 10 to the person whose conduct came to be inquired into incidentally. We are unable to accept this view of S.10. S. 3 which permits a Commission of Inquiry to be appointed is wide enough to cover an inquiry into the conduct of any individual. It could not be a natural reading of the Act to cut down the scope of S.3 by an implication drawn from S. 10. We also think that this argument is ill-founded for we are unable to agree that S. 10 does not apply to a person whose conduct comes up directly for inquiry before a Commission set up under S. 3. We find nothing in the words of S. 10 to justify that view. If a Commission is set up to inquire directly into the conduct of a person, the Commission must find it necessary to inquire into that conduct and such a person would, therefore, be one covered by S. 10. It would be strange indeed if the Act provided for rights of a person whose conduct incidentally came to be enquired into but did not do so in the case of persons whose conduct has directly to be inquired into under the order setting up the Commission. It would be equally strange if the Act contemplated the conduct of a person being inquired into incidentally and not directly. What can be done indirectly should obviously have been considered capable of being done directly. We find no justification for accepting the reading of the Act

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which learned counsel for Bakshi Ghulam Mohammad suggests." (emphasis added)

46. The Constitution Bench in Jagannath Rao vs. State of Orissa, AIR 1969 SC 215, held:

"One of the items regarding one of persons into whose conduct the Commission was appointed to inquire, in the notification appointing a Commission on Inquiry, was the subject matter of a civil litigation pending in appeal before the High Court. In the civil litigation none of the parties had adduced any evidence. The person had not appeared as a witness and had not presented himself for cross-examination. The suit was decided by lower Court purely on basis of burden of proof. There was no factual enquiry into the allegations. It was contended that the appointment of Commission of Inquiry during the pendency of the appeal in the suit constituted contempt of Court.

Held that it did not amount to contempt of Court. It was not also possible to accept the argument that the inquiry was in relation to the very matters which were the subject matter of the civil suit and of the pending appeal.

The inquiry cannot be looked upon as a judicial inquiry and the order ultimately passed cannot be enforced proprio vigore. The enquiry and the investigation by the Commission do not therefore amount to usurpation of the function of the courts of law. The scope of the trial by the Courts of law and the Commission of Inquiry is altogether different. In any case, it cannot be said that the Commission of Inquiry would be liable for contempt of Court if it proceeded to enquire into matters referred to it by the Government Notification. (emphasis added)

The Constitution Bench in Krishna Ballabh & Ors., vs. Commission of Inquiry & Ors.,AIR 1969 SC 258, held:

"12. It cannot be stated sufficiently strongly that the public life persons in authority must never admit of such charges being even framed against them. If they can be made then an inquiry whether to establish them or to clear the name of the person charged is called for. If the charges were vague or

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speculative suggesting a fishing expedition we would have paused to consider whether such an inquiry should be allowed to proceed. A perusal of the grounds assures us that the charges are specific, and that records rather than oral testimony will be used to establish them. We agree with the High Court that the affidavit in opposition make out a sufficient case for inquiry."

"13. It is contended that clause (d) was excluded from the notification so that the inquiry might not recoil upon those who had started it. Reference is made to the notification of March 12, 1968 to show that in the notification ordering inquiry against Mr. Mahamaya Prasad Sinha and his colleagues that clause is included. That should be a matter of satisfaction to the present appellants. It is unlikely that the Commission will overlook evidence which points to corruption or malpractice in others. Even if no direct finding is given there will be ample reference to these matters in the report." (emphasis added)

47. A 7 Judge Bench of the Apex Court in State of Karnataka vs. Union of India, AIR 1978 SC 68 was considering an original suit questioning the competence of Union of India to set up a Commission under Commission of Inquiry Act. Separate judgments were recorded:

CJI in his judgment held:

"32. After the two sections, set out above, which disclose the apparently very wide and undefined scope of inquiries to be conducted under the Act the only limit being that they must relate to matters of "definite public importance", follow sections conferring upon Commissions under the Act powers of a civil court for the purpose of eliciting evidence, both oral and documentary and powers to punish those guilty of its contempts. Section 6 of the Act, however, makes it clear that statements made by a person in the course of his evidence before the Commission "will not subject him to or be used against him in any civil or criminal

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proceeding except in a prosecution for giving false evidence by making such statements". But, this protection is not extended to statements made in reply to questions not required by the Commission to be answered, or, those made on matters which are not relevant to the subject-matter of the inquiry. The Act, however, contains no provisions for giving any effect to the findings of the Commission or for enforcing any order which could be made by the Commission against any person as a result of an inquiry. In fact, the only orders a Commission under the Act is empowered to make against anybody are those relating to adduction of evidence, whether oral or documentary, and those which may be required to protect the Commission against "acts calculated to bring the Commission or any member thereof into disrepute". The proceedings of a Commission could only result in a Report which is to be laid before the Legislature concerned under the provisions of Section 3(4) of the Act. Hence, the obvious intention behind the Act is to enable the machinery of democratic government to function more efficiently and effectively. It could hardly be construed as an Act meant to thwart democratic methods of government.

52. A Commission of Inquiry could not properly be meant, as sometimes suspected, merely whitewash ministerial or departmental action rather than to explore and discover, if possible, real facts. It is also not meant to serve as a mode of prosecution and much less of persecution. Proceedings before it cannot serve as substitutes for proceedings which should take place before a Court of law invested with powers of adjudication as well as of awarding punishments or affording reliefs. Its report or findings cannot relieve Courts which may have to determine for themselves matters dealt with by a Commission. Indeed, the legal relevance or evidentiary value of a Commission's report or findings on issues which a Court may have to decide for itself, is very questionable. The appointment of a Commission of Inquiry to investigate a matter which should, in the ordinary course, have gone to a Court of law generally a confession of want of sufficient evidence - as in the case of the appointment of the Warren Commission in the U.S.A. to inquire into facts concerning the murder of the late President Kennedy - to take it to Court combined with an attempt to satisfy the public need and

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desire to discover what had really gone wrong and how and where if possible. A Commission of Inquiry has, therefore, a function of its own to fulfill. It has an orbit of action of its own within which it can move so as not to conflict with or impede other forms of action or modes of redress. Its report or findings are not immune from criticism if they are either not fair and impartial or are unsatisfactory for other reasons as was said to be the case with the Warren Commission's report.

130....It was held that the scope of inquiry may also cover matters ancillary to th inquiries themselves. Furthermore, relying on Kathi Raning Rawat v.State of Saurashtra 1952 SCR 435: (AIR 1952 SC 123) it was pointed out (at p.293) : (of SCR): (at p.p.546 of AIR):

> "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."

133. It may be mentioned here that in A.Sanjeevi Naidu v. State of Madras (1970) 3 SCR 505 at p.512: (AIR 1970 SC 1102 at p.1106) this Court examined the position of an individual Minister who determines matters of policy and programmes of his Ministry, within the framework of major policies of the Government, vis-a-vis the officials in the Department in his charge who act on behalf of the Government subject to the directions given orally or in writing by the Minister concerned. Hence, it may become a matter of considerable difficulty, delicacy, and importance, in a particular case, to apportion the blame or responsibility for any act or decision,alleged to be wrongful, between the Minister concerned and the officials who work under his directions Such apportionments could be safely entrusted only to experts who have had considerable judicial experience and can deal with complete impartiality and dexterity with issues raised. The moral or collective responsibility which is political is a different matter which may no doubt be affected by the report of a Commission of Inquiry. Individual liability may have even more serious consequences for the Minister concerned than the collective

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responsibility which carries only political implications.

134. In State of Jammu & Kashmir v. Bakshi Ghulam Mohammad, 1966 Supp. SCR 401 : (AIR 1967 SC 122) this Court pointed out that even if Bakshi Ghulam Mohammad had ceased to be the Chief Minister of the State of Jammu & Kashmir his past actions would not cease to be matters of public importance. It definitely disapproved the view of the High Court when it said (at p. 407):(of Supp SCR): (at p. 127 of AIR):

"These learned Judges of the High Court expressed the view that the acts of Bakshi Ghulam Mohammad would have been acts of public importance if he was in office but they ceased to be so as he was out of office when the Notification was issued. In taking this view, they appear to have based themselves on the observation made by this Court in Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279: (AIR 1958 SC 538) 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 inquiry". The learned Judges felt that since Bakshi Ghulam Mohammad was out of office, he had become innocuous; apparently, it was felt that he could no longer threaten the public well-being by his acts and so was outside the observation in Dalmia's case. We ar clear in our mind that this is a misreading of this Court's observation. This Court, as the learned Judges themselves noticed, was not laying down and exhaustive definition of matters of public importance. What is to be inquired 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 became matters of public importance. It is irrelevant whether the person who committed those acts is still in power to be able to repeat them".

135. The clear implication of the last mentioned pronouncement, with which I find myself in complete and respectful agreement, was that even if a Minister in the exercise of his official power does acts which may amount to criminal offences, yet, inquiry into them may be made as a matter of public importance and not of just private importance. And, what can be done when he is out of office may, a fortiori, be ordered when he is

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in office. This Court also said there as follows with which also I entirely agree (page 406 of Supp SCR): (at p. 126 of AIR):

"..... it is difficult to imagine how a Commission can be set up by a Council of Ministers to inquire into the acts of its head, the Prime Minister, while he is in office. It certainly would be a most unusual thing to happen. If the rest of the Council of Ministers resolves to have any inquiry, the Prime Minister can be expected to ask for their resignation. In any case, he would himself go out. If he takes the first course, then no Commission would be set up for the Ministers wanting the inquiry would have gone. If he went out himself, then the Commission would be set up to inquire into the acts of a person who was no longer in office and for that reason, if the learned Judges of the High Court were right, into matters which were not of public importance. The result would be that the acts of a Prime Minister could never be inquired into under the Act. We find it extremely difficult to accept that view".

Justice Chandrachud in his judgment held:

"181. It is clear from these provisions and the general scheme of the Act that a Commission of Inquiry appointed under the Act is a purely fact-finding body which has no power to pronounce a binding or definitive judgment. It has to collect facts through the evidence led before it and on a consideration thereof it is required to submit its report which the appointing authority may or may not accept. There are sensitive matters of public importance which, if left to the normal investigational agencies, can create needless controversies and generate an atmosphere of suspicion. The larger interest of the community require that such matters should be inquired into by high-powered commissions consisting of persons whose findings can command the confidence of the people. In his address in the Lionel Cohen Lectures, Sir Cyril Salmon speaking on "Tribunals of Inquiry" said:

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

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No doubt this rarely happens, but when it does it is essential that public confidence should be restored, for without it no democracy can long survive. This confidence can be effectively restored only by throughly investigating and probing the rumours and allegations so as to search out and establish the truth. The truth may show that the evil exists, thus enabling it to be noted (rooted?) out, or that there is no foundation in the rumours and allegations by which the public has been disturbed. In either case, confidence is restored".

A police investigation is, as its very best, a unilateral inquiry into an accusation since the person whose conduct is the subject-matter of inquiry has no right or opportunity to cross-examine the witness whose statements are being recorded by the police. Section 8-C of the Act, on the other hand, confers the right of cross-examination, the right of audience and the right of representation through a legal practitioner on the appropriate Government, on every person referred to in S. 8-B and with the permission of the Commission, on any other person whose evidence is recorded by the Commission. Clauses (a) and (b) of S. 8-B refer respectively to persons whose conduct the Commission considers it necessary to inquire into and persons whose reputation, in the opinion of the Commission, is likely to be prejudicially effected by the Inquiry. It is undeniable that the person whose conduct is being inquired into and if he be a Chief Minister or a Minister, the doings of the Government itself, are exposed to the fierce light of publicity. But that is a risk which is inherent in every inquiry directed at finding out the truth. It does not, however, justify the specious submission that the enquiry constitutes an interference with the executive functions of the State Government or that it confers on the Central Government the power to control the functions of the State executive. After all, it is in the interest of those against whom open allegations of corruption and nepotism are made that they should have an opportunity of repelling those allegations before a trained and independent Commission of Inquiry which is not hide-bound by the technical rules of evidence. "It is only by establishing the truth that the purity and integrity of public life can be preserved", and that is the object which the Commissions of Inquiry Act seeks to achieve." (Emphasis added)

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Justice Kailasam in his dissenting judgment held:

"265. .... The Commission may summon and enforce the attendance of any person and examine him, require the discovery and production of any document, and requisition any public record or copy thereof from any office. Section 8-B provides that if at any stage of Inquiry the Commission considers it necessary to inquire into the conduct of any person and is of opinion that his reputation is likely to be prejudicially affected by the inquiry the Commission shall give to that person a reasonable opportunity of being heard and Section 8-C confers a right of cross-examination and representation by the legal practitioner to persons referred to in Section 8-B of the Act.

266. Reading the Act as a whole the Commission is given wide powers of inquiry compelling the attendance of witnesses and persons who are likely to be prejudicially affected giving them a right of cross-examination. When a report is submitted by the Commission Section 3(4) contemplates action to be taken by the appropriate Government.

271. In Bakshi's case (AIR 1967 SC 122) the enquiry was directed by the State Government against the conduct of an erstwhile Chief Minister of the State. This Court rejected the contention that the inquiry against a person is outside the scope of S. 3 of the Commissions of Inquiry Act. It was contended before this Court relying on S. 10 of the Jammu & Kashmir Commission of Inquiry Act, 1962 that the inquiry directed into the conduct of Bakshi Ghulam Mohammed was outside the scope of the Act. Section 10 of the Jammu & Kashmir Act is similar to the present Ss. 8-B and 8-C of the Commissions of Inquiry Act, 1952. The Section states that if at any stage of the inquiry the Commission considers it necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially affected 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. Basing on the wording of the section it was submitted that the inquiry is normally only into a definite matter of public importance and inquiries into the conduct of a person can arise only as incidental or ancillary to such an inquiry. As the section

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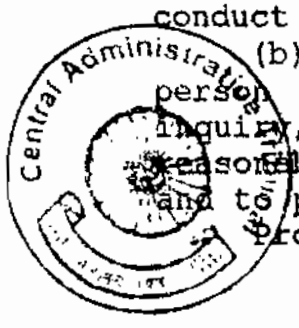
contemplates the necessity of inquiry into the conduct of a person arising at any stage of the Inquiry Commission's proceedings, it was submitted that the inquiry into the conduct of a person is only incidental. This Court rejected the contention on the ground that S. 3 which permits a Commission of Inquiry to be appointed is wide enough to cover an inquiry into the conduct of an individual and it could not be natural reading of the Act to cut down the scope of S. 3 by an implication drawn from S. 10. This observation was, as the subsequent sentence makes it clear, made in rejecting the plea that S. 10 does not apply to a person whose conduct comes up directly for inquiry before a Commission set up under S. 3 in Bakshi's case as the inquiry was ordered by the State Government into the affairs of a Chief Minister who had ceased to be in office, the Court was not called upon to consider the question whether the Union Government can appoint a commission of inquiry into the conduct of a Chief Minister of a State in office which implies the determination of Centre-State relationship under the Constitution. In this case the appointment was by the State Government against the erstwhile Chief Minister. Apart from this question it is seen that if S. 3 of the Commissions of Inquiry Act, 1952 is construed as enabling the appointment of a commission of inquiry into the conduct of a State Chief Minister in office it would result in empowering the Central Government to exercise the powers, which would never have been contemplated by the Parliament, for as already pointed out the result of such construction would be inviting the State Government to appoint a commission of inquiry into the conduct of Central Ministers regarding matters in List II and List III. It is significant to note that after Bakshi's case was decided by the Supreme Court in 1966, amendments were introduced to the Commissions of Inquiry Act by Act 79 of 1971. Section 8-B runs as follows:-

"8-B. 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 affected 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



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where the credit of a witness is being impeached".
No doubt, there was corresponding section, S.10 of the Jammu & Kashmir Commission of Inquiry Act, 1962 which was considered in Bakshi's case by the Supreme Court, and the Court had held that S. 10 was also applicable to a case in which the conduct of a person was directly under inquiry. It observed that the scope of S. 3 cannot be cut down by an implication drawn from S. 10. The subsequent amendment of the Act by introduction of S. 8-B, which provides that if at any stage of the inquiry, the Commission considers it necessary to inquire into the conduct of any person, or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, would indicate that the Parliament was aware of the consequences of such wording, and intended the Act to be applicable in the main to any definite matter of public importance while an inquiry into the affairs of persons would be permissible if it arose as incidental or ancillary to such inquiry. This construction appears to be justifiable, for otherwise S. 3 would have the result of empowering the delegate i.e., the Union Government, to order an inquiry into the affair of the Chief Minister of a State and inviting the same treatment from the State Government." (emphasis added)

48. A Three Judge Bench of the Apex Court in Kiran Bedi vs. The Committee of Enquiry, AIR 1988 SC 2252, amongst others held:

"All those persons to whom notices under S. 8-B of the Act are issued have to be examined at the end of the inquiry. If these persons are to be examined at the end of the inquiry, there is no justifiable reason to deny the same treatment to the petitioners (also police officials) who are in the same position as those three persons. The action of the Committee in asking them to be cross-examined at the beginning of the inquiry is discriminatory. Mere non-issue of notices to them under S. 8-B ought not to make any difference if they otherwise satisfy the conditions mentioned in S. 8-B. The issue of such notice is not contemplated under S. 8-B of the Act. It is enough if at any stage the Commission considers it necessary to inquire into the conduct of any person. Such person would thereafter be governed by S. 8-B of the Act."

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The detailed reasons were given in the judgment reported in Smt. Kiran Bedi & Jinder Singh vs. The Committee of Enquiry, AIR 1989 SC 714.

"17. Consequently, we find it unnecessary to consider in any further detail, the submissions made by counsel for the parties on this point. In so far as point No. (ii) is concerned, it would be seen that the use of the word 'or' between clauses (a) and (b) of Section 8-B of the Act makes it clear that Section 8-B would be attracted if requirement of either clause (a) or clause (b) is fulfilled. Clause (a) of Section 8-B applies when the conduct of any person is to be enquired into whereas Clause (b) applies to a case where reputation of a person is likely to be prejudicially affected. As regards the enquiry about the conduct of Smt. Kiran Bedi and Jinder Singh, even the Committee in its interim report specifically stated that the conduct of these two petitioners among others was to be examined. Having once so stated in unequivocal terms, it was not open to the Committee to still take the stand that Section 8-B was not attracted in so far as they were concerned. Recourse to procedure under Section 8-B is not confined to any particular stage and if not earlier, at any rate, as soon as the Committee made the aforesaid unequivocal declaration of its intention in its interim report, it should have issued notice under Section 8-B to the two petitioners, if it was of the view as it seems to be, for which view there is apparently no justification, that issue of a formal notice under Section 8-B was the sine-qua-non for attracting that Section. At all events, the Committee could not deny the petitioners the statutory protection of Section 8-B by merely refraining from issuing a formal notice even though on its own declared intention the section was clearly attracted.

18. In State of Jammu and Kashmir v. Bakshi Ghulam Mohammad, 1966 Suppl SCR 401: (AIR 1967 SC 122), while dealing with Section 10 of the Jammu and Kashmir Commission of Enquiry Act, 1962 which seems to be an amalgam of Section 8-B and 8-C of the Commissions of Enquiry Act, 1952 and repelling the argument that Section 10 applied only when the conduct of a person came to be enquired into incidentally and not when the Committee had been set up to enquire directly into the

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conduct of a person, it was held:

"If a Commission is set up to inquire directly into the conduct of person, the Commission must find it necessary to inquire into that conduct and such a person would, therefore, be one covered by S. 10. It would be strange indeed if the Act provided for rights of a person whose conduct incidentally came to be enquired into but did not do so in the case of persons whose conduct has directly to be inquired into under the order setting up the Commission. It would be equally strange if the Act contemplated the conduct of a person being inquired into incidentally and not directly. What can be done indirectly should obviously have been considered capable of being done directly."

19. In State of Karnataka v. Union of India, (1978) 2 SCR 1 : (AIR 1978 SC 68), with reference to Section 8-B of the Act, it was held at page 108 of the report that it was undeniable that the person whose conduct was being enquired into was exposed to the fierce light of publicity.

20. Keeping in view the nature of the allegations made in the statements of case and the supporting affidavits filed on behalf of the various Bar Associations including the Delhi High Court Bar Association requirement of even Clause (b) of Section 8-B was fulfilled inasmuch as if those allegations were proved they were likely to prejudicially affect the reputation of the two petitioners. Indeed, in view of the term of reference which contemplated taking of "stringent action" against all those responsible, even the career of the petitioners as Police Officers was likely to be affected in case an adverse finding was recorded against them. In view of the aforesaid specific term of reference, the principle that the report of a Commission of Enquiry has not force proprio vigore does not on a pragmatic approach to the consequences seem to constitute sufficient safeguard so far as the petitioners are concerned.

21. The reason for the importance attached with regard to the matter of safeguarding the reputation of a person being prejudicially affected in Clause (b) of Section 8-B of the Act is not far to seek."(emphasis added)

49. A Three Judge Bench of the Apex Court in Fazalur Rehman & Ors., vs. State of UP & Ors.,AIR 1999 SC 3460 held:

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"It is appropriate that when in a matter of 'definite public importance', a Commission of Inquiry is appointed under the Commission of Inquiries Act, 1952, the State Government should examine the Report expeditiously and decide what action, if any, is required to be taken on that Report promptly. To keep a report pending for years together and, as, in this case, for a decade, does no credit to anybody. Reports of Commissions of Inquiry should not be allowed to gather dust for years together as it reflects adversely on the utility of such commissions and would affect the credibility of the entire exercise." (emphasis added)

50. The Apex Court in T.T. Antony vs. State of Kerala & Ors., AIR 2001 SC 2637 held:

"33. It is thus seen that the report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest that being bound by the Rule of law and having duty to act fairly, it has endorsed to act upon it. The duty of the police - investigating agency of the State - is to act in accordance with the law of the land. This is best described by the learned law Lord - Lord Denning - in R v. Metropolitan Police Commissioner, (1968) 1 All E.R. 763 at p.769 observed as follows:

"I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decided whether or not suspected persons are to be prosecuted; and, it need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself."

34. Acting thus the investigating agency may with advantage make use of the report of the Commission in its onerous task of investigation bearing in mind that it does not preclude the investigating agency from forming a different opinion under Section 169/170 of Cr.P.C if the evidence obtained by it supports such a conclusion. In our view, the Courts civil or criminal are not bound by the report or findings of the Commission of Inquiry as they have to arrive a their own decision on the evidence placed before them in accordance with law." (emphasis added)

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51. The Apex Court in P. Janardhana Reddy vs. State of AP, AIR 2001 SC 2631 held:

> "On a plain reading of the statutory provision it is clear that there is no prescribed form or particular manner for the appropriate Government to express its opinion that it is necessary to appoint a Commission of Inquiry. Such opinion may be expressed in any manner by which the public would get the information about such appointment. When the Chief Minister of the State expressed on the floor of the State Legislature that he has no objection for appointment of a Commission of Inquiry under the Act to inquire into the serious allegations regarding irregularities in payment of compensation for the acquired land. It is reasonable to presume that he had given necessary thought to the matter and on being satisfied that it is necessary so to do expressed his agreement for appointment of a Commission of Inquiry under the Act. The statement was made on behalf of the State Government. This was followed by the categorical statement of the Advocate General representing the State before the High Court that the requisite notification will be issued without delay and indeed such notification was issued. A serious matter of public importance which gave rise to criticisms from different quarters against public functionaries and also private persons is a matter which calls for proper inquiry and if the State Government in its wisdom thought it proper to entrust the inquiry to a sitting or retired Judge of the High Court, no exception can be taken to such action. It is desirable that activities of public functionaries should be above board and if the allegations and criticisms are received in that regard the matter should be promptly inquired into and appropriate follow-up action taken. The need is all the more important in matters relating to public money. Therefore merely on grounds that there is no specific order in the file which would show that the State Government had formed such opinion as required under S. 3(1) of the Act, notification appointing the Commission of Inquiry was not liable to be quashed as illegal. A hyper technical view cannot be taken of the matter in which the State Government which is the repository of the authority had made the appointment." (emphasis added).

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52. The Apex Court in State of Bihar vs. Lal Krishna Advani, AIR 2003 SC 3357 held:

> "One is entitled to have and preserve, one's reputation and one also has a right to protect it. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, must provide a chance to him to have his say in the matter. In such circumstances right of an individual to have the safeguard of principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review. It would but be necessary to notice a person whose conduct the Commission considers it necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially affected by the inquiry. Such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Thus, the principle of natural justice was got inducted in the shape of 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." (emphasis added)

It also rejected the plea that it was premature to approach the Court as the Government was yet to take a final decision on the report.

53. The principles laid down in the decision of the Apex Court and the report of Law Commission referred to as report hereinafter can be summarised as under:-

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(a) Commission of Inquiry Act was enacted to obviate the need for special legislations on each occasion. The Government had felt convinced of the utility of such enquiry as a means of arriving at a proper appraisal of matters of public importance and of infusing confidence of the public in its administration and conduct (para 2, report). Justice Chandrachud in his decision in State of Karnataka (supra) observed that it is in the interest of those against whom allegations of corruption and nepotism are made that they should have an opportunity of repelling those allegations before a trained and independent commission of enquiry not hide bound by technical rules of evidence . It is only by establishing the truth that the purity and integrity of public life can be maintained and that is the object of Commission of Inquiry Act.

Prior to enactment of Tribunal of Inquiry (Evidence Act, 1921 the enquiries were held by a Committee of Parliament in England. They had one defect that they could be influenced by political considerations, (para 5 (a) report).

The Apex Court has upheld the setting up of Commissions of Enquiry in matters of Public importance.

(b) The report refers to the speech of Lord

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Chancellor Viscount Kilmuir that question of discovering what has happened is of prime importance. It may kill harmful rumours or stigmaticise conduct which falls short of standards of public life although not a criminal offence or civil wrong. Prosecution is not the only method of punishing persons who pollute the pure strings of public administration. Many persons would like to suffer a sentence in secret. The glaring publicity is both its strength and weakness.

Justice Chandrachud in his judgment in State of Karnataka (supra) held that matters of public importance require investigations by high powered commissions consisting of persons whose findings can command confidence. He referred to the speech of Sir Cyril Salmond that moments occur when allegations and rumors create a nation wise crisis of confidence. When that happens it is necessary that public confidence be restored because without that the democracy cannot survive. Once the truth emerges it either leads to steps to root out the evil or that there was no foundation leading to restoration of confidence.

The Constitution Bench in K.B.Sahay (supra) negatived the plea that public life of persons in authority must never admit of such charges being

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framed against them. It held that an enquiry has to be held either to establish them or to clear the names.

The Apex Court in P.Janardan Reddy(supra) held that it is desirable that activities of public functionaries should be above board and if allegations and criticisms are received they should be promptly inquired into and appropriate follow up action taken.

(c) The then CJI in State of Karnataka observed that Commission of Enquiry could not properly be meant to whitewash ministerial on departmental action rather than to explore and discover, if possible real facts. The only orders a Commission under the Act can make against anybody are those relating to adduction of evidence and those which may be required to protect the Commission against acts calculated to bring Commission or any member thereof into disrepute.

(d) The Commission is not bound by Technical Rules of Evidence (State of Karnataka (supra). It can accept hearsay evidence at second hand or third hand causing irretrievable damage.(Report).

The Commission is only a fact finding body and

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is not a court Civil Court/Criminal Courts have to act on the basis of evidence before them. The police while investigating a matter can take note of such findings but have to come to their own independent conclusion. Acceptance of the Report of the Commission shows that Government has agreed to act upon it.

(f) The Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore. The CJI in State of Karnataka quoted the decision in R.K.Dalmia that a distinction has to be made between decisions which by themselves have no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. The 3 Judge Bench in Kiran Bedi (supra) held that in view of the Terms of reference the principle that report of Commission of Enquiry has not force proprio vigore does not on a pragmatic approach to the consequences seem to constitute sufficient safeguard as far as the petitioners are concerned.

(g) The then CJI has in para 133 of his judgment in State of Karnatka (supra) has referred to the decision in A.Sanjeevi Naidu that apportionment of blame between the civil servant and Minister could be safely entrusted to experts who have

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considerable judicial experience and can deal with complete impartiality and dexterity with issues raised. Individual liability may have even more consequences for the Minister concerned than collective responsibility which only has political implications.

(h) The scope of Section 8 B has been also laid down.

54. Section 6 of Commission of Enquiry Act along with the portion emphasised by the learned counsel for applicant in para 4.1 reads as under:

> "4.1. Section 6 reads thus:
> Statements made by persons to the Commission-. No statement made by a person in the course of giving evidence before the Commission ***shall subject him to,*** or be used against him in, ***any civil or criminal proceeding except to prosecution for giving false evidence.*** By such statement:
> Provided that the statement-
> (i) Is made in reply to a question which he is required by the Commission to answer, or
> (ii) Is relevant to the subject matter of the inquiry. (emphasis supplied.)"

55. All the three Judges in Kehar Singh & Ors., vs. State (Delhi Administration) AIR 1988 SC 1883 recorded separate judgments. One of the contention was non supply of statement of witnesses recorded by the Thakkar Commission. Para 15 & 26 which set out the case of appellants on this count, read as

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under:

> "15. The other question raised by the learned counsel for the appellants was that by preventing the accused from getting the papers of the Thakkar Commission, its report and statements of persons recorded and who are prosecution witnesses at the trial the accused have been deprived of substantial material which could be used for their defence."

> "26. There remains however one more question which was raised by the counsel for the appellants that in spite of the prayer made by the accused person during the trial and also in the High Court about the copies of the statement of witnesses who have been examined by the prosecution and were also examined before the Commission (Thakkar Commission) to be provided to the accused so that they may be in a position to use these statements for purposes of contradiction or for other purposes. They had also prayed for the copy of the Thakkar Commission report as the Thakkar Commission was inquiring into the events which led to the assassination of the Prime Minister. In fact, it was contended that the terms of reference which were notified for the enquiry of the Thakkar Commission were more or less the same questions which tell for determination in this case and thus the appellants have been prejudiced and they could not avail of the material which they could use to build up their defence. According to learned counsel not only the accused are entitled to previous statements of witnesses who are examined by the prosecution but they are also entitled to any material on the basis of which they could build up their defence and raise appropriate issues at the trial. Learned counsel relied on number of decisions and also said that the decision of the Supreme Court in Dalmia case is not binding as in that case the scope of Section 6 of the Commissions of Inquiry Act was not in question."

Justice Oza noted in para 34 of the judgment that the High Court relied on the decision in Dalmia's case (supra). The relevant part of his judgment reads:

> "35. According to learned counsel, in that case it was not the scope of S. 6 but the validity of the

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provisions was in question and the observations were only incidental and it cannot be regarded as a binding precedent. The High Court has accepted these observations of this Court in the judgment quoted above and in our opinion rightly. But apart from it, we shall try to examine S. 6 itself and other provisions relevant for the purpose as to whether the appellants i.e., the accused before the trial court were entitled to use the copies of the statement of those prosecution witnesses who were examined before the Thakkar Commission for purposes of cross examination or to use the report of the Commission or whether it could be handed over or given over to the accused for whatever purpose they intended to use. The learned counsel for the parties on this aspect of the matter have referred to number of decisions of various High Courts and also some of the decisions of the English Courts. They are being dealt with in the judgment elsewhere as in my opinion it is not necessary to go into all of them except examining the provisions of the Act itself.

37. On analysis of the provision, it will be found that there are restrictions on the use of a statement made by a witness before the Commission. First is "shall subject him to ..... any civil or criminal proceedings except a prosecution for giving false evidence by such statement." This, in my opinion, is the first restriction. The second restriction, according to me, is spelt out from the words "or be used against him in any civil or criminal proceedings." Thus if we examine the two restrictions stated above it appears that a statement given in a Commission cannot be used to subject the witness to any civil or criminal proceedings nor it can be used against him in any civil or criminal proceedings and in my opinion it is in the context of these restrictions that we will have to examine the provisions of the Evidence Act which permit the use of a previous statement of a witness and for what purpose.

39. A perusal of these three sections clearly indicate that there are two purposes for which a previous statement can be used. One is for cross-examination and contradiction and the other is for corroboration. The first purpose is to discredit the witness by putting to him the earlier statement and contradicting him on that basis. So far as corroboration is concerned it could not be disputed.

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that it is none of the purposes of the defence to corroborate the evidence on the basis of the previous statement. Section 145 therefore is the main section under which relief was sought by the accused. The use for which the previous statement was asked for was to contradict him if necessary and if it was a contradiction then the earlier statement was necessary so that that contradiction be put to the witness and that part of the statement can be proved.

40. To my mind, there could be no other purpose for which the appellants could use the previous statements of those witnesses. Contradiction could be used either to impeach his credit or discredit him or to pull down or bring down the reliability of the witness. These purposes for which the previous statements are required could not be said to be purposes which were not against the witnesses. The two aspects of the restrictions which S. 6 contemplates and have been discussed earlier are the only two aspects which could be the result of the use of these statements. I cannot find any other use of such previous statements in criminal proceedings. It is therefore clear that without going into the wider questions even a plain reading of S. 6 as discussed above will prohibit the use of the previous statements at the trial either for the purposes of cross examination to contradict the witness or to impeach his credit. The only permissible use which has been provided under S. 6 which has been discussed earlier and therefore the Courts below were right in not granting the relief to the accused".

Justice Ray did not record any opinion on this point. Justice Shetty noted in para 220 of the judgment that the High Court held that evidence before the Commission is wholly inadmissible in any other civil or criminal proceedings except for prosecuting the person for perjury. The relevant part of his judgment reads:

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"226. Dissecting the section, it will be clear that the statement made by a person before the Commission, in the first place shall not be the basis to proceed against him. Secondly, it shall not be 'used against him' in any subsequent civil or criminal proceedings except for the purpose set out in the section itself. The single exception provided thereunder is a prosecution for giving false evidence by such statement.

"229. It is urged that even if the words "used against" mean preventing the use of the statement for the purpose of contradiction as required under Section 145 of the Evidence Act, there are other provisions by which the previous statement could be looked into for productive use without confronting the same to the witness. Reference is made to the first part of Section 145, sub-sections (1) and (2) of Section 146 as well as Sections 157 and 159 of the Evidence Act. It is also said that the term "used against" in Section 6 was not intended to be an absolute bar for making use of such statement in subsequent proceedings. The learned Additional Solicitor General, on the other hand, states that Section 6 was intended to be a complete protection to persons against the use or utility of their statements in any proceedings except in case of prosecution for perjury. Such protection is necessary for persons to come and depose before the Commission without any hesitation. Any dilution of that protection, it is said, would defeat the purpose of the Act itself.

234. The Act may now be analysed. The Act is a short one consisting of 12 sections. Section 3 provides power to the appropriate government to appoint a Commission of Inquiry for the purposes of making an inquiry into any definite matter of public importance. Section 4 confers upon a Commission of Inquiry certain powers of a civil court (for example, summoning and enforcing the attendance of witnesses and examining them on oath, etc.). Section 5 empowers the appropriate government to confer some additional powers on a Commission of Inquiry. Section 5 (a) authorises the Commission to utilise the service of any officer or investigating agency for the purpose of conducting any investigation pertaining to inquiry entrusted to the Commission. Section 6 confers upon persons giving

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evidence before the Commission protection from prosecution except for perjury. The other sections are not important for our purpose except Section 8. Section 8 provides procedure to be followed by the Commission. The Commission is given power to regulate its own procedure and also to decide whether to sit in public or in private.

235. The Statement of Objects and Reasons of the original Act reads:

> It is felt that there should be a general law authorising government to appoint an inquiring authority on any matter of public importance, whenever considered necessary, or when a demand to that effect is made by the legislature and that such law should including the powers to summon witnesses, to take evidence on oath, and to compel persons to furnish information. The Bill is designed to achieve this object.

236. It will be clear from these provisions that the Act was intended to cover matters of public importance. In matters of public importance it may be necessary for the government to fix the responsibility on individuals or to kill harmful rumours. The ordinary law of the land may not fit in such cases apart from it being time-consuming.

237. The Commission under our Act is given the power to regulate its own procedure and also to decide whether to sit in camera or in public. A Commission appointed under the Act does not decide any dispute. There are no parties before the Commission. There is no lis. The Commission is not a Court except for a limited purpose. The procedure of the Commission is inquisitorial rather than accusatorial. The Commission more often may have to give assurance to persons giving evidence before it that their statements will not be used in any subsequent proceedings except for perjury. Without such an assurance, the persons may not come forward to give statements. If persons have got lurking fear that their statements given before the Commission are likely to be used against them or utilised for productive use on them in any other proceeding they may be reluctant to expose themselves before the Commission. Then the Commission would not be able to perform its task. The Commission would not be able to reach the suggests of truth from the obscure

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horizon. . The purpose for which the Commission is constituted may be defeated.

238. The court should avoid such construction to Section 6 which may stultify the purpose of the Act. Section 6 must on the other hand, receive liberal construction so that the person deposing before the Commission may get complete immunity except in a case of prosecution for perjury. That is possible if the word "against" used in Section 6 is properly understood. The meaning given in Black's Law Dictionary supports such construction : (at p. 57)

Against - Adverse to, contrary .... Sometimes meaning "Upon", which is almost, synonymous with word "on" ....

239. Apart from that, it may also be noted that Section 6 contains only one exception. That is a prosecution for giving false evidence by such statement. When the legislature has expressly provided a singular exception to the provisions, it has to be normally understood that other exceptions are ruled out.

244. The Royal Commission appears to have thoroughly examined the provisions as to immunity to witnesses in the legislations of Canada, Australia and India and Section 9 of the Special Commission Act, 1888. The Commission has stated that the immunity provided to witnesses under Section 1 (3) of the Act, 1921 is insufficient for the purpose of advancing the object of the Act. It should be extended so that the statement of a witness before the Tribunal shall not be used against him in any subsequent civil or criminal proceedings except in a prosecution for perjury by giving false evidence before the Tribunal. The extension of such immunity, according to the Toyal Commission, would bring Section 1(3) of the Act, 1921 into line with the similar provisions in the legislations of Canada, Australia and India. The legislation in India is the Commissions of Inquiry Act, 1952 with which we are concerned. It is apparent that the Royal Commission was of opinion that Section 6 of our Act provides complete protection to witnesses in terms of Section 9 of the Special Commission Act, 1888. It means that the statement given before a Commission shall not be admissible against the person in any subsequent civil or criminal proceeding save for

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245. There is, therefore, much to be said for the observation made in Dalmia case and indeed that is the proper construction to be attributed to the language of Section 6 of the Act. I respectfully affirm and re-emphasise that view."

56. The learned counsel for the applicant has contended that Section 6 of the Commission of Inquiry Act and as explained in Kehar Singh makes it absolutely clear that no civil or criminal proceedings can be taken in respect of evidence before a Commission of enquiry.

Mr. B.N. Doctor, learned counsel for the respondents on the other hand has contended that the decision has been given in the context of a criminal proceeding and hence the same is not applicable to the facts of this case. Reliance is placed on the decision of Apex Court in Union of India vs. Major Bahadur Singh, (2006) 1 SCC 368. The Apex Court has held:

"The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken our of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to

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explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

It is further contended that in any case it does not confer a substantial right.

57. A Three Judge Bench of the Apex Court in Director of Settlements, A.P vs. M.R. Apparao, (2002) 4 SCC 638 has held:

"In view of Article 141 of the Constitution, it is an essential function of the Supreme Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme

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> Court canhot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court."

58. Three separate decisions were recorded in Executive Engineer Dhenkanal, Minor Irrigation division, Orissa and others vs. N.C. Budharaj (deceased), 2001(2) SCC 721. The majority judgment on behalf of three Judges held:

> "Substantive law", is that part of the law which creates, defines and regulates rights in contrast to what is called adjective or remedial law which provides the method of enforcing rights."

59. A perusal of para 26 of the judgment in Kehar Singh (supra) would show that the contention raised was that the decision in Ramkrishna Dalmia (supra) was not binding as the scope of Section 6 was not in question in the said case and that the High Court has erred in placing reliance on them. Justice Oza in para 35 has observed that High Court rightly relied on the decision. The matter has also been examined from the view point of Evidence Act and negatived. Justice Jagannath Shetty has examined the suggestion of Additional Solicitor General that protection is necessary for persons to come and depose before the Commission without any hesitation and that any dilution would defeat the very purpose for which the Commission of Inquiry Act has been enacted in paras 231 to 245 and for

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the reasons recorded therein has come to the conclusion that observations made in Dalmia's case is the proper construction which he respectfully affirms and re-emphasises.

60. If we follow the principles laid down in M.R.Appa Rao (supra) then this is the ratio decidendi and hence lays down the law on the subject. The decision in N.C.Budharaj leads to the conclusion that it confers a substantive right.

61. We have come to the conclusion that the decision of Apex Court in Kehar Singh lays down a substantive law and is not confined to facts of that case. We have also concluded in para 41 above that the departmental proceedings are civil proceeding. It is evident that protection of Section 6 is available in respect of evidence tendered before the Commission.

The further question that arises is as to whether a charge sheet can be allowed to be issued in respect of evidence given before the Commission or in respect of disclosure of that evidence even when the Commission is seized of the matter.

62. Amongst others Section 4(a) was amended to empower the Commission to summon and enforce the

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attendance of any person from any part of India. The Commission of Inquiry can regulate its own procedure. Section 8B provides that if at any stage of enquiry the Commission considers it necessary to enquire into the conduct of any person or is of the opinion that reputation of any person is to be prejudicially affected then that person shall be given a reasonable opportunity of being heard and to produce evidence in his defence. Section 8C provides that the appropriate Government, person referred to under Section 8B and any other person whose evidence is recorded by the Commission may with the permission of Commission (a) examine a witness other than a witness produced by him, (b) address the Commission and (c) be represented before the Commission by a legal practitioner or any other person.

63. We have summarised in para 53 above the principles which can be discerned from the various decision of Apex Court given in the context of Commission of Inquiry Act and the Law Commission. The rationale for Commission of Inquiry Act is to ascertain the truth. The purpose is to restore public confidence without which democracy cannot survive. Even though the evidence is inadequate for civil action/criminal trial there may be evidence

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to suggest that conduct was not in accordance with the norms of behaviour expected from people in public life or purity in public life. The publicity associated with the enquiry is both its strength and weakness. It is essentially a fact finding enquiry. It can pass orders for adduction of evidence. It is not bound by technical rules of evidence and can accept hear say evidence. Its findings do not have force proprio vigore. These findings have to be tabled in Legislature along with the action taken report. The then CJI has observed in State of Karnataka (supra) that some decisions may become enforceable on action being taken. Section 8 B provides that if the Commission wants to return findings in respect of conduct/reputation of a person he has to be put to notice and given an opportunity to produce his evidence. It was held in Kiran Bedi that the principle that findings of Commission of Inquiry do not have force proprio vigore was not a sufficient safeguard in the facts of that particular case.

64. We have summarised the written summary on behalf of respondents in para 9. We have extracted in sub-clause (d) submissions regarding Rule 8(4). It is stated therein that it is the prerogative of the Commission what to publish or not to publish and the applicant cannot claim that once the

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documents were filed before the Commission they became public and he has right to publish it.

We had summarised in para 6 the submissions made by respondents in the pleadings before the Tribunal. We had extracted in sub-clause (b) (ii) extracts of para 7 of the reply. It had been submitted that Tribunal should not go into merit/demerit or proceedings before other Forums/Authorities at Large. This would be highly improper as it may embarrass other Forums/Authorities when they deal with same on merits in future and possibilities of taking conflicting views cannot be ruled out.

65. The then CJI had observed in State of Karnataka that purpose of Commission of Inquiry is to explore and discover real facts rather than to white wash ministerial or departmental action. In case the Govt. denies the existence of certain evidence or does not come forward to bring all evidence in its possession before the Commission which ought not to be the situation, the Commission cannot remain a silent spectator as to ascertain the truth is of highest importance. That is the reason for issue of public notice. The then CJI in his judgment in State of Karnataka (supra) had also held that where there is question of fixing responsibility between the Minister and Civil Servant entrustment of the

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matter to a Judge is the better course of action.

Such being the position a truly anomalous situation will arise where the Commission thinks that the evidence tendered before it by an officer is credible and on the basis of which responsibility can also be fixed under Section 8 B and the superior Authority issues charge sheet for departmental enquiry even before the Commission has submitted its report. This amounts to prejudging the issue even when the Commission is seized off the matter and is ascertaining the facts. Such departmental proceedings cannot be permitted till the Commission has submitted its report.

66. The then CJI Justice P.N.Bhagwati in his judgment in S.P.Gupta vs.UOI AIR 1982 SC 149 has held as under:-

> "63. Now, it is obvious from the Constitution that we have adopted a democratic form of Government . Where a society has chosen to accept democracy as its creedal faith it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy. "Knowledge" said James Madison,"will for ever govern ignorance and a people

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who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it is but a prologue to a farce or tragedy or perhaps both." The citizens' right to know the facts,t he true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the Government is increasingly growing in different parts oft the world."

"66.... This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. It is in the context of this background that we must proceed to interpret S.123 of the Indian Evidence Act."

The Right to Information Act 2005 has since been enacted. While few sections came into force on 15.06.05 the remaining sections came into force with effect from 12.10.05. The preamble, section 8 (2), 22 & 24(1) are as under:

Preamble:

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for

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matters connected therewith or incidental thereto.

"8(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority any allow access to information, if public interest in disclosure outweighs the harm to the protected interests

22. Act to have overriding effect- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

24(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established bythe Central Government or any information furnished by such organisations to that Government."

Hon'ble Justice A.H.Saikia, Judge, Assam High Court in his article 'The Right to Information Act, 2005 – An instrument to Strengthen democracy.' (AIR 2007 page 113 Journal) has referred to Justice Bhagwati's observation in S.P.Gupta and has also written as follows under following two headings.

<u>Check & Control on usual secrecy and discretion in governance.</u>

" The Chief Justice of India, Hon'ble Justice Y.K.Sabharwal, while inaugurating the National Colloquium on Right to Information at the National Judicial Academy, Bhopal on 11.12.2005 has rightly commented that RTIA itself is a revolutionary step. His lordship has observed that the powers conferred by the Constitution are so far largely limited to the three organs of the Government- Judiciary, Executive and Legislature, but, a revolutionary step has now been taken in the form of the Right to Information to

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actually confer those powers on the masses. The Hon'ble C.J.I.has exhorted the Administrative Officers to change their old habit of not divulging information the people in view of RTIA. According to His Lordships, the Bill has been introduced after much debate and contemplation to strengthen democracy in the country in keeping with the changing times and persons occupying top posts in administration are only expected to extend whole-hearted help to the campaign.(Hindustan Times, Bhopal Edition, 12-12-2005)."

"A question is now posed as to whether the Official Secrets Act, 1923 which was enacted in pre-independent era to consolidate the law relating to official secrets, would create obstacles in implementation of RTIA and/or to be amended for proper implementation of RTIA. Answering the same, it may be said that Sections 8 (2) and 22 have already taken care of such potential hurdles as most of the prohibitions included in the Act of 1923 in regard to acquisition and possession of information now get whittled down by the provisions of Section 8 (2) which by a non-obstante clause overrides the prohibition contained in the Act of 1923 and enables a person to obtain information even in the area where the information is classified as a secret document, if public interest in disclosure of such information outweighs the harm to the protected interest. Further, Section22 specifically provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Act of 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than RTIA. In view of the same, there is hardly, at this stage, any need for amendment/annulment of the Act of 1923. However, it is always open, in case of utmost necessity and if circumstances demand, to delete the Act of 1923, being a colonial legislation, from the statute book and to bring a new legislation, which can help more and more transparency in the democratic governance".

67. It is well settled that what cannot be done directly should not be permitted to be done indirectly. Para 4 of the decision of the Constitution Bench of the Apex Court in Kunnikoman

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vs. State of Kerala, AIR 1962 SC 723 refers to the earlier decision in K.C. Gajpati Narayan Deo vs. State of Orissa, AIR 1953 SC 375 wherein it was held that the whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly.

In view of the foregoing discussion we are of the view that charge sheet cannot be issued for disclosure of evidence tendered before the Commission or given to the Commission immediately after disclosure.

68. The Apex Court in IAS (SCS) Association UP vs. UOI 1993 (1) SLR 69 has held as under:-

> "Under Sec.3(2) of the Act, every rule made by the Central Govt. under Sec.3(1) and every regulation made there under or in pursuance of any such rules, shall be laid, as soon as may be, after such rules or regulation is made, before each House of Parliament while in session. Before the expiry of the session, if both Houses agree to make any modification to such rules or regulations or both Houses agree that such rules or regulations should not be made, the rule or regulation shall thereafter have effect, only in such modified form or be of no effect as the case may be. So, however, that any such modification or annulment shall be, without prejudice to the validity of anything previously done under that rule or the regulation. Thereby the rules or regulations made in exercise of the power under Sec.3(1) of the Act regulating recruitment and the conditions of service for persons appointed to an All India Service are statutory in character."

69. The AIS (Conduct) Rules have been framed under

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the All India Services Act. Rule 3(1), 7,8 & 9 of AIS (Conduct) Rules reads as under:-

"3(1) No member of the service shall, in the performance of his official duties, or in exercise of powers conferred on him, act otherwise than in his own best judgment to be true and correct except when he is acting under the direction of his official superior.

7. Criticism of Government - No member of the service shall, in any Radio Broadcast (or communication over any public media or in any document publish anonymously, pseudonymously or in his own name or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion-

(i) which has the effect of an adverse criticism of any current or recent policy or action of the Central Govt. or a State Govt.; or

(ii) which is capable of embarrassing the relations between the Central Govt. and any State Govt.; or

(iii) which is capable of embarrassing the relations between the Central Govt. and the Govt. of any Foreign State:

Provided that nothing in this rule shall apply to any statement made or views expressed by a member of the service in his official capacity and in the due performance of the duties assigned to him.

"8.Evidence before committees, etc.-(1) Save as provided in sub-rule (3),no member of the service shall, except with the previous sanction of the Government give evidence in connection with any inquiry conducted by any person, committee or other authority.

(2) Where any sanction has been accorded under sub-rule (1) no member of the service giving such evidence shall criticize the policy or any action of the Central Government or of a State Government.

(3) Nothing in this Rule shall apply to-

(a) evidence given at any inquiry before an authority appointed by the Government or by Parliament or by a State Legislature; or

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(b) evidence given in any judicial inquiry; or

(c) evidence given at departmental inquiry ordered by any authority subordinate to the Government."

9. Unauthorized communication of information- No member of the service shall except in accordance with any general or special order of the Government or in

the performance in good faith of the duties assigned to him, communicate directly or indirectly and official document or part thereof or information to any Government Servant or any other person to whom he is not authorised to communicate such document or information.

Explanation- Quotation by a Member of the service (in his representations to the Head of Office or Head of Department or President) of, or from, any letter circular or office memorandum or from the notes on any file to which he is not authorised to have access, or which he is not authorised to have access, or which he is not authorised to keep in his personal custody or for personal purposes, shall amount to unauthorised communication or information within the meaning of this rule."

70. We also note that provisions of rule 10 of CCS (Conduct) Rules are parimateria provisions of rule 8(1) to 8(3). It is seen that the CCS(Conduct) Rules has no proviso like that contained in sub-rule (4). A question can naturally arise as to why was this sub rule included in case of AIS officers?

71. Sub-clause (3) is regarding evidence given before a Committee of Parliament/Legislature or Government, Judicial enquiry or departmental enquiry. The judicial enquiry is conducted under

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Commission of Inquiry Act. The disciplinary proceedings are conducted under the Public Servants Enquiries or rules under an Act (in case of AIS officers) or rules framed under Article 309. Is the sub-rule drafted only to indicate that they should not disclose the same without permission of those bodies as the evidence becomes the property of these bodies. The respondent themselves in para 9 of their written submissions have stated"It is the prerogative of commission what to publish or not".

72. It is clear from the aforesaid decision that AIS (Conduct) Rules have statutory force. The respondents have themselves accepted that it is the prerogative of Commission to decide what to publish and what not to publish. If that is so it is for the Commission of Inquiry to decide in the first instance as to what action has to be taken for disclosure of such action.

73. It is finally contended by Mr.Doctor, the learned counsel for the respondents that the applicant has approached this Tribunal at a very preliminary stage and that the decisions of Apex Court in UOI & Another vs.Upendra Sigh 1994(3) SCC 357, Divisional Forest Officer vs.Kunnisetty Satyanarayana 2006(12) SCC 28A (also reported in AIR 2007 SC 906) show that the Tribunal should not

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interfere at the initial stage.

Learned counsel for the applicant has drawn our attention to the first sentence of para 6 of decision in Upendra Singh and has contended that both the principles laid down have been fulfilled in the present case. It is also contended that as there was a complete protection in respect of evidence tendered before the Commission under Section 6 of the Inquiry Act, the charge sheet has been issued in utter disregard of law. It is thus also a case of malice in law and hence, a malafide exercise of power. There is also a malafide in facts. The charge sheet therefore, is required to be interfered with at this stage.

74. The Apex Court in UOI &Ors. vs. Upendra Singh 1994(3) SCC 357 has held:-

> "In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to got into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court to tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate

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authority as the case may be."

(Reliance is placed on the underlined portion by the counsel for applicant)

75. The respondents in District Forest Officer vs. R.Rajamanickam & Another 200 (9) SCC 284 had approached the Tamil Nadu Administrative Tribunal against the issue of charge sheet and the inquiry initiated pursuant thereto. The Tribunal restrained the appellant from passing any final order. When the matter subsequently came up the Tribunal reevaluated and reassessed the evidence and came to the finding that charges were not proved and quashed the charge sheet . After noticing the decision in Upendra Sigh (supra) the Apex Court allowed the appeal and quashed the order.

76. The respondents in UOI vs. Kunisetty Satyanarayana AIR 2007 SC 906 has been served with a charge sheet for appearing in departmental examination against a post reserved for ST and was promoted as LSG based on said reservation when as per Govt,. Decision he did not belong to Konda Kapu community and as such was not entitled for the reservation. Instead of replying to the charge sheet he approached the Tribunal. CAT Hyderabad Bench disposed off the OA by giving a direction to submit a reply. The Writ Petition filed by the respondent was allowed. The Apex Court held:

"Ordinarily no writ lies against a charge sheet or

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show cause notice. The reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. No doubt, in some very rare and exceptional cases the High Court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal." (emphasis added)

77. A Three Judge Bench of Apex Court in State of Punjab & Ors., vs. Ex. Const. Ram Singh, AIR 1992 SC 2188 held:

"4. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus:-

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform acts performed improperly, and failure to act in the face of an affirmative duty to act."

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P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p. 821 'misconduct' defines thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion if left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

5. Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

6. The Apex Court in S.R.Vekataraman vs. UOI &

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Another AIR 1979 SC 49 has held:-

"5. We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V.D.Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Govt. in making the order of premature retirement dated March 26, 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Govt. in making the alleged wrongful order of her premature retirement so as to amount to malice in fact."

6. It is, however, not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercise for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C.J., in Pilling v. Abergele Urban District Council (1950) 1 KB 636 where a duty to determine a question is conferred on an authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal likes can and ought to adjudicate on the matter."

7. The principle which is applicable in such cases has thus been stated by Lord Esher M.R.in The Queen on the Prosecution of Richard Westbrook vs. The Vestry of St.Pancras, (q1890) 24 QBD 371 at p.375:-

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

This view has been followed in Sedler vs. Sheffield Corporation, (1924) 1 Ch 483."

79. The Apex Court in Gurdial Singh v.State of Punjab AIR 1979 SC 1622 has held:-

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"9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions- is the attainment of ends beyond the sanctioned purposes of power by simultation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even law when he stated. "I repeat....that all power is a trust- that we are accountable for its exercise-that , from the people, and for the people, all springs, and all must exist." Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even bengin. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act."

80. Both the judges recorded separate decisions in State of Bihar v.P.P.Sharma AIR 1991 SC 1260, Justice Ramaswamy held:

"9....In Judicial Review of Administrative Action by S.A.deSmith , 3rd Edn. At p.293 stated that "the concept of bad faith in relation to the exercise of

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statutory powers comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred . His intention may be to promote another public interest or private interest. A power is exercised malaciously if its repository is motivated by personal animousity towards those who are directly affected by its exercise. The administrative discretion means power to being administratively discreet. It implies authority to do an act or to decide a matter on discretion". The administrative authority is free to act in its discretion if he deems necessary or if he or it is satisfied of the immediacy of official action on his or its part. His responsibility lies only tot the superiors and the Govt. The power to act in discretion is not power to act ad arbitrarium. It is not a despotic power, nor hedged with arbitrariness, nor legal irresponsibility to exercise discretionary power in excess of the statutory ground disregarding the prescribed conditions for ulterior motive. If done it brings the authority concerned in conflict with law. When the power was exercised malafide it is undoubtedly gets vitiated by colourable exercise of power."

"50. Mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An Administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; ad (ii) whether the administrative action is contrary to the objects, requirements ad conditions of a valid exercise of Administrative power."

81. The Apex Court in Parbodh Sagar vs. Punjab State Electricity Board AIR 2000 SC 1684 has held:

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"The expression 'mala fide' is not a meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances."

82. The Apex Court in M/s Tandon Brothers vs. State of West Bengal AIR 2001 SC 1866 has held:

"35....Government action must be based on utmost good faith, belief and ought to be supported with reason on the basis of the state of law-if the action is otherwise or run counter to the same the action cannot but be ascribed to be mala fide and it would be a plain exercise of judicial power to countenance such action and set the same aside for the purpose of equity, good conscience and justice. Justice of the situation demands action clothed with bona fide reason and necessities of the situation in accordance with the law. But if the same runs counter, law Courts would not be in a position to countenance the same.

83. The Apex Court in State of A.P. & Ors. vs. Goverdhanlal Pitti (2003) 4 SCC 739 has held:

"The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact"."Legal malice" or "malice in law" means "something done without lawful excuse . In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and no necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others".

Words and Phrases Legally Defined, 3rd Edn.London Butter worths, 1989, relied on

Where malice is attributed tot the State, it can

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never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense it can be described as an act which is taken with an oblique or indirect object. The legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings."

84. Justice C.K.Thakkar and Ms.M.C.Thakkar have recently revised V.G.Ramchandran's Law of Writs. In chapter 11 Administrative Discretion & Judicial Review Serial 17 Excess pr Abuse of discretion (g) Malafide, they recorded as under. Under (ii) Meaning, (iii) Doctrine explained and (iv) types .

(ii) Meaning

An administrative action may be said to be bona fide or taken in good faith, if it is in fact done honestly. An act done honestly is deemed to have been done in good faith. No administrative authority can be allowed to act in bad faith or contrary to the requirements of a statute or to exercise discretion to achieve an ulterior object. The expression 'mala fide' is not meaningless jargon[3].

'Malice' may imply spite or ill-will . Thus,the legal meaning of malice is"ill-will or spite towards a party and any direct or improper motive in taking an action"[4].

3. State of Bihar v.P.P.Sharma, supra; Prabodh Sagar v.Punjab State Electricity Board, supra; General Assembly of Free Church of Scotland v. Overtown; 1904 AC 514 : 91 LT 394 : 20 TLR 730.

4. Prabodh Sagar v.Punjab State Electricity Board, supra; State of A.P. v.Goverdhanlal, supra.

(iii) Doctrine explained.

As already noted, every administrative authority

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must exercise power conferred on it legally, properly and in consonance with the object of the statute. Lord Lindley rightly stated:" I take it to be clear that there is a condition implied in this as well as in other instruments which create power, namely, that the powers shall be used bona fide for the purpose for which they are conferred[10]" To put it differently, every action of a public authority must be based on utmost good faith, genuine belief and ought to be supported by reason. If the action is contrary to law, it is mala fide and can be set aside on the ground of justice, equity and good conscience."

10. General Assembly of Free Church of Scottland v.Overtaum ,1904 AC 515: 91 LT 394: 20 TLR 730; see also Pratap Singh vs.State of Punjab, AIR 1964 SC 72; (1964) 4 SCR 733; Express Newspapers (P) Ltd. v. Union of India, (1986) 1 SCC 133,219020: AIR 1986 SC 872, 926; Dhari Gram Panchayat v.Mazdoor Mahajan Sangh, (1987) 4 SCC 213; Supreme Court Employees' Welfare Association v. Union of India, (1989) 4 SCC 187: AIR 1990 SC 334; State of Bihar v.P.P.Sharma, 1992 Supp.(1) SCC 222: AIR 1991 SC 1260.

11. Tandon Brothers v.State of W.B. (2001) 5 SCC 664, 683-84: AIR 2001 SC 1866, 1877."

(iv) Types

In the leading case of ADM, Jabalpur v.Shivakanta Shukla[23] , (Habeas Corpus case), referring to Shearer v.Shields[24] , Khanna, J.stated:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned,he acts ignorantly, and in that sense innocently. Malice in fact is quite a different thing; it means an actual malicious intention on the part of the person who has done the wrongful act,and it may be, in proceedings based on wrongs independent of contract a very material ingredient in the question of whether a valid cause of action can be stated."[25]

23. (1976) 2 SCC 521:AIR 1976 SC 1207: 1976 Supp. SCR 172
24. 1914 AC 808
25. (1976) 2 SCR 521,770:AIR 1976 SC 1207, 1272.

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85. Coming to the facts of this case we find that the applicant has been proceeded against on the following articles of charges:

> "(Articles of Charges against Shri R.B. Sreekumar, IPS)
>
> Shri R.B. Sreekumar during his tenure as Additional D.G.P (I.B) from 6.4.2002 to 18.9.2002 and as Additional D.G.P (PR) from 19.9.2002 has committed following serious misconduct and/or misbehaviour.
>
> Charge - 1
>
> Shri R.B. Sreekumar through his representatives knowingly, falsely claimed in Press and Media Conference a "private" diary (The contents whereof are not admitted) to be an "official" diary written by him during his tenure as Additional DGP, which conduct of his is unbecoming of a member of the service under Rule-3(1) of All India Service (Conduct) Rules, 1968.
>
> Charge - 2
>
> Before making public disclosure of the said diary in Press and Media, no permission of any higher authority was obtained by Shri R.B. Sreekumar, which conduct of his is unbecoming of a member of the service under Rule 3(1) of All India services (Conduct) Rules, 1968.
>
> Charge - 3
>
> Shri R.B. Sreekumar made public disclosure of the said private and unauthorised diary before press and media through his representatives, with an ulterior motive to malign higher officers/authorities and State Government and tarnish their reputation/image out of vindictiveness as he was not promoted to the rank/grade of Director General of Police. This conduct of Shri R.B. Sreekumar is unbecoming of a member of the service and thereby he violated Rule 3(1) of All India Service (Conduct) Rules, 1968.
>
> Charge - 4
>
> Shri R.B. Sreekumar through his representatives made a statement in Press and Media Conference with regard to the said alleged "official" diary and contents thereof which had the effect of an adverse criticism of the State Government and which was capable of embarrassing the relations between the Central Government and State Government. This conduct of Shri R.B. Sreekumar is unbecoming of the member of the

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service and thereby he violated Rule 3(1) and 7 of All India Service (Conduct) Rules, 1968.

Charge - 5

Shri R.B. Sreekumar cladestinely, unauthorisedly and illegally recorded conversation with Secretary (Law & Order), Home Department Mr. Murmu and Special Government Counsel Mr. Pandya, which conduct of his is unbecoming of a member of the service and thereby he violated Rule 3 (1) of All India Service (Conduct) rules, 1968.

Charge - 6

Shri R.B. Sreekumar unauthorisedly parted with the said illegally and unauthorisedly recorded conversation as aforesaid to the Press and Media without obtaining permission of higher authorities, which conduct of his is unbecoming of a member of the service under Rule 3 (1) of All India Service (Conduct) Rules, 1968.

Charge - 7

The illegal and unauthorised recorded conversation as mentioned in Charge-5 was unauthorisedly parted with media by Shri R.B. Sreekumar through his representatives with an ulterior motive to enable media to publish distorted version thereof with a view to malign Secretary (Law & Order), Home Department Mr. Murmu, Special Government Counsel and State Government as a whole and tarnish their image and reputation in the eyes of public, which conduct of his is unbecoming of the service under Rule 3(1) of All India Service (Conduct) rules, 1968.

Charge - 8

Shri R.B. Sreekumar did not obtain the required permission from the competent authorities before producing secret communications/reports from Subsidiary Intelligence Bureau (SIB) Ministry of Home Affairs, Government of India, dated 14/3/2002, 26/3/2002, 28/3/2002, 22/4/2002, 20/5/2002 and TP Message from Ministry of Home Affairs, Government of India dated 21/5/2002 along with his affidavit dated 15/7/2002 before the Hon'ble Commission of Inquiry of Mr. Justice Nanavati and Mr. Justice Shah. This conduct of Shri R.B. Sreekumar is unbecoming of a member of the service and thereby he violated Rule 3(1) of All India Service (Conduct) Rules, 1968 and section 5 of the official Secrets Act.

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Charge - 9

Shri R.B. Sreekumar, upon his transfer from Addl.DGP (IB) to Addl. DGP(PR) on 18/9/2002, kept copies of secret reports of I.B in his possession without permission of higher authorities as it is evident from his original Application No. 213/2005 filed with Hon'ble Central Administrative Tribunal, Ahmedabad, Shri R.B. Sreekumar produced copies of such secret documents as annexure A-2 to O.A. No. 213/2005 without taking permission of higher authorities. This conduct of Shri R.B. Sreekumar is unbecoming of a member of the service and violative of the provisions of section 5 of Official Secrets Act, 1923 and Rules 7 (1) and 9 of AIS (Conduct) Rules, 1968."

86. We note that the applicant has been charged with violation of Rule 3(1) of AIS (Conduct) Rules except in case of article 8 and not with violation of Rule 8 (4). He is also charged with violation of official secrets Act in charge 8. He is also charged with violation of Rule 7 in respect of Article of Charge 4 and Rule 9 in respect of article of charge 9. There is nothing in the reply to suggest as to what action has been taken against the then DG(P), who had permitted the filing of these affidavits as per the applicant. The 31 relied upon documents can be summarised as under:-

(i) Copy of the three affidavits filed before Hon'ble Justice Nanavati & Shah Commission (sl.9 to 11). Copy of forwarding letter dated 15.07.02 filing the said affidavit (sl.28). Secret T.P.Messages of MHA/Subsidiary Intelligence Bureau filed with letter dated 15.07.02 affidavit dated 06.07.02 (sl.29,30) verbatim record of the meeting with Shri G.C.Murmu and Arvind Pandya held on 24.08.04, as claimed by applicant, and filed before the Commission on 9.4.2005 (sl.33).

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(ii) Copy .of OA.213/05 . Copy of falsely claimed private diary annexed with that OA (Sl.12 &1). Secret reports of State filed with OA (sl.31)

(iii)News item published in Divya Bhaskar on 04.03.05 and Tehelka peoples paper on 12.03.05. The letter is a publication . The latter is with G.C.Murmu, etc. (sl.24,25)

(iv) Press clipping dated 24.04.05 in 5 papers and video clipping of News & ITV channel news regarding the claim of applicant that said diary is official diary (sl.13 to 18).

(v) Press clipping dated 26.05.05 in four papers regarding appointment of Committee consisting of 3 cabinet Ministers of GOI to look into the claims made in said diary (19 to 22) .

(vi) Statement of :

(a) Shri O.P.M.Mathur, (ADG) Communication) dated 16.4.05 & 02.08.05.

(b) Shri K.R.Vora, Storekeeper 6.7.05 and 02.08.05
(c) Shri J.Mahapatra, ADG (IB) dt.2.8.05 & 17.08.05
(d) Shri G.C.Raigar, Ex ADG (IB) dt.2.8.05
(e) Shri G.C.Murmu, Secretary (Law & Order) dt.16.08.05
(f) Shri Arvind Pandya, Senior Govt. Council dt.16.08.05.

(vii) E-mail of Shri K.Chakravory, Ex-DGP dt.17.08.05.

87. The learned counsel for the applicant has stated in his written submission that this charge sheet is related to evidence before the Nanavati Shah Commission. As the evidence has been tendered before the Commission no departmental proceedings could have been initiated against him in respect of these very events/documents. Whether or not the

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image of any person has been tarnished is squarely a matter within the province and jurisdiction of Commission. These cannot be construed as misconduct. Making a tape recording of discussion is not an illegality. It is not a misconduct. The law is well settled that evidence, if relevant, can be admitted irrespective of manner in which it was obtained. Both the audio recording and tape recording were aidememoire. Charge 8 relates to filing of IB reports before the Commission. This is contrary to Section 6 of Commission of Inquiry Act and over looks respondents own conduct. The invocation of Section 123 in the context of Commission of Inquiry is itself illegal. A faint attempt was made by the respondents in oral arguments that this charge may not be pressed and is severable. Such a case was not made out in pleadings. In any case when the charges are inextricably linked up no question of severing them arises. The decision in Union Bank vs. Viswa Mohan 1998(4) SCC 310 and Management of Akhil Bharatiya Chah Mazdoor Sangh (infra) 2004(8) SCC 200 refers. Charge 9 relates to filing of documents before the Tribunal. Once the evidence was tendered before the Commission it passes into public domain. It is not the case of respondents that the same is not relevant to the expanded terms of reference. The applicant had informed his superiors in his

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letter of 3.11.2004 that he had documentary evidence of illegal oral instructions given to him viz. The register and audio recording of conversation with Mr.Kapadia & later, with Mr.Murmu/Mr Pandya. The respondents took no action. Malafide is writ large. Both the tests specified in Upendra Singh are fulfilled. The charge sheet is required to be quashed. The principle is the same as that of discharge under 239 CRPC or of demurrer in proceedings under the Civil Court.

The crucial dates as mentioned in the synopsis of the OA are as under:-

09.08.2000	Repatriated to Gujarat. Granted retrospective promotion in ADG w.e.f. 13.4.99.
27.2.2002	Godhra incident.
April, 2002	Appointed as ADGP (Intelligence), the Head of State Intelligence Bureau.
15.7.2002	Files first affidavit before the Justice Nanavati and Justice Shah Commission.
9.8.2002	Presentation of his assessment of Law and Order before the Central Election Commission.
16.8.2002	Asking of explanation for sending a secret message by fax.(It was for obtaining information for the meeting of the Commission)
7.9.02	Speech of Hon'ble C.M.at Bahucharagji.

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13.9.02	Receipt of fax message from NCM asking for report on verbatim speech of Hon'ble C.M.with directions and later on advised verbally and in writing to avoid sending of such report.
17.9.02	Transferred as ADGP (PR) (submitted full report on communal situation particularly on 24.4.02 , 15.6.02, 20.8.02 and 28.8.02 during this period)
15.7.04	Notice received for appearing before the Commission for cross examination. Request made to initiate suitable action to claim privilege.
25.8.04	Meeting with Shri G.C.Murmu, Secretary (Home) and Shri Arvind Pandya, Govt. Pleader to the said Commission.
31.8.04	Deposition before the Commission and submitting exhibit (Annexure A-9).
28.9.04	Explanation called for, for not reporting the inquiry pending against him at the time of grant of promotion. Reply submitted vide letter dated 3.11.2004.
6.10.04	2nd Affidavit before the Commission.
19.10.04	Reopening of a closed issue in a professional matters which had been accepted earlier as an act done in good faith and as part of routine duties by the then DGP.
February 05	Superseded in promotion to the rank of DGP.

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11.4.05 Third affidavit before the Commission.

13.4.05 Filing of OA.213/05

(22.8.05 Passing of orders in the said OA regarding amendment of the OA to challenge the placing of the recommendation in the sealed cover).

6.9.05 Issue of the present charge sheet. (Date in bracket added. Ordder in OA 213/05 refers.)

Mr.Doctor, on the other hand in his written note has contended that even if it is accepted that evidence falls within purview of section 6 the charges 6 & 7 do not fall within the purview of Section 6. These material was published before the evidence was given to Commission. Serial 24 and 25 of relied upon document refers. The applicant has not acted in good faith and the authenticity of register and tape recording is in doubt. The applicant had deposed before the Commission on 31.08.04 and 6.10.04 but did not say a word about these. All the allegations of bias and malice are nothing but almost a verbatim repetition of such allegations in OA.213/05. No (sic, now) judicial notice can be taken of the fact that in OA.213/05 all these allegations had been withdrawn or not pressed. In any case the charges except article 8 is not in respect of evidence tendered before the Commission but in respect of their publication. It was the prerogative of Commission what to publish

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or not to publish. The act of publication is sought to be used and not the material etc. The Tribunal cannot look into the correctness of charges. The decision in UOI vs.Upendra Singh 1994 (3) SCC 357, DFO vs.Rajmanikkam 2000 (9)SCC cases 284 and UOPI vs. Kummu Setty Satyanarayana 2006 (9) SCC 28A refers.

88. A number of questions arise? Did the meetings referred to in the register take place? Were these meetings fixed in advance or were these daily meetings or meetings held impromptu? Who was required to keep the minutes or having regard to urgency immediate follow up action was to be taken? Were the persons giving oral orders required to follow it up in writing if he was a superior bureaucrat? Whether the seniors to the applicant were present in meeting presided by political masters and were they required to communicate the same to the applicant in addition to the applicant asking for a written confirmation? Why was the applicant asked to file the affidavit dated 6.10.04 on the extended terms of reference when he was no longer working as ADG (Intelligence)? Is it because he was ADG (Intelligence) during that period or was their some other reason? Can Commission of Inquiry be denied access to secret documents? If yes, what is the procedure for claiming privilege?

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Even though they are of great importance, we are not expressing any opinion as they are not required to be answered for the purposes of this OA.

We are also not expressing any opinion on other factual controversies in the OA as they are not germane to the decision in the OA. These are (a) Whether the applicant was required to report the fact that a charge sheet had been issued to him when he was on deputation to Government of India and the reply of the applicant that (i) G.O.I instructions do not permit him to do so & (ii) he had been promoted retrospectively from a date earlier from the date of charge sheet, (b)Calling for his explanation for sending Secret messages by fax and finding his explanation unsatisfactory and the letter of applicant for reconsideration stating therein that (i) This information was required immediately to answer queries of the Election Commission & (ii) Other officers had also been doing so, (c) Calling for his explanation in the context of alleged leakage of his letter addressed to Commissioner (Police), Ahmedabad in the Press and the applicant's response that (i) The DG (P) had looked into the matter and had found that there was no indiscretion on part of applicant and he had acted professionally &(ii) access to documents not being provided/not being allowed to take photocopies to file a proper reply, (d)The

controversy regarding sending the speech of Chief Minister at Bahucharajee. While the Government claims that he was instructed to send it the applicant claims that he was subsequently sent a written note by the then DG(P) quoting ACS (Home) that this was not required to be sent. There is also a confidential note containing what the applicant claims to be the real reasons for change of attitude towards him.

89. The order dated 16.8.02 of the Election Commission of India is on the subject of holding of elections to Gujarat Assembly. The observations and findings of the full commission and its 9 Member team have been summed up under different heads. The extent of affected areas is in para 18 to 20. After referring to the information given by applicant the following order is recorded in para 20.

> "This evidently falsifies the claim of the other authorities that the riots were localised only in certain pockets of the State".

The Law and Order situation is discussed in para 28 to 33. Para 32 states that Chief Secretary and DG (P) presented a picture of normalcy. It refers to applicant's statement about the undercurrent of tension and fear prevailing beneath apparent normalcy. He was supported by new Commissioner of Police, Ahmedabad, K.R. Kaushik. It refers to some other statement of applicant.

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Para 33 of the order begins with the sentence "The Commission is of the considered view that the Law & Order situation in the State is far from normal".

Para 41 referred to by respondents is under the Head Relief & Rehabilitation. There is no reference to Commissioner of Police in this pargraph.

90. We note that special reference 1 of 2002 was made in connection with Gujarat Elections. Justice V.N. Khare, as he then was, wrote the judgment on behalf of CJI, himself & another Judge. There were two other judgments. It is noted in para 1:

"Much before the matter was taken up for hearing it was made clear by the Bench hearing the reference that it would neither answer, the reference in the context of elections in Gujarat nor work into questions of facts arising out of the order of the Election Commission and shall confine its opinion only on question of law referred to it".

It was held that the plea that elections have to be held in 6 months is not tenable.

91. The Apex Court in Zahira Habibulla H. Sheikh Vs. State of Gujarat, (2004) 4 SCC 158 held:

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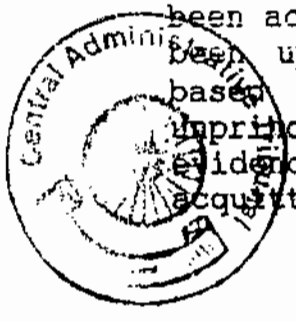
"If the State's machinery fails to protect citizen's life, liberties and property and the investigation is conducted in a manner to help the accused persons, it is but appropriate that the Supreme Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members.

Though justice is depicted to be blindfolded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administering justice, and not to ignore or turn the mind/attention of the court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts, and erode in stages the faith inbuilt in the judicial system, ultimately destroying the very justice-delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

Criminal trials should not be reduced to be mock trials or shadow-boxing or fixed trials. Judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution.

It is no doubt true that the accused persons have been acquitted by the trial court and the acquittal has been upheld, but if the acquittal is unmerited and based on tainted evidence, tailored investigation, unprincipled prosecution and perfunctory trial and evidence of threatened/terrorised witnesses, it is no acquittal in the eye of the law and no sanctity or



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credibility can be attached and given to the so-called findings. It seems to be nothing but a travesty of truth, fraud on the legal process and the resultant decisions of courts - coram non judis and non est. There is, therefore, every justification to call for interference in these appeals.

Keeping in view the peculiar circumstances of the case, and the ample evidence on record, glaringly demonstrating a subversion of the justice-delivery system with no congenial and conducive atmosphere still prevailing in the State of Gujarat, it is directed that the retrial shall be done by a court under the jurisdiction of the Bombay High Court. The Chief Justice of the said High Court is requested to fix up a court of competent jurisdiction. (Para 75)

The State Government is directed to appoint another Public Prosecutor and it shall be open to the affected persons to suggest any name which may also be taken into account in the decision to so appoint. Though the witnesses or the victims do not have any choice in the normal course to have a say in the matter of appointment of a Public Prosecutor, in view of the unusual factors noticed in this case, to accord such liberties to the complainant parties, would be appropriate."

It appears that the State of Gujarat and one of the accused who was facing trial had moved applications in the above judgment. The submissions and the judgment under head note 'A' in Zahira Habibullah Sheikh vs.State of Gujarat and Ors. 2004 (5) SCC 353 is as under:-

"A. Constitution of India - Art.136 - Transfer of case - Nature and scope of power of Supreme Court in respect of -Best Bakery case

Two applications "for directions and modification of the judgment and order dated 12.4.2004 in Zahira Habibullah Sheikh v. State of Gujarat, (2004) 4 SCC 158, and connected cases" were filed by the State of Gujarat and one of the accused who faced trial in

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the case. It was submitted by the applicant State that the direction given for transfer outside the State of Gujarat therein was not in accordance with law for such a direction could only have been given on a petition filed under Section 406 Cr.P.C and not otherwise. Moreover, it was submitted that even by exercise of power under Article 142 of the Constitution also such a direction could not have been given. There was no power according to the applicant State for suo motu directing such a course to be adopted.

Dismissing the applications, the Supreme Court

"The Supreme Court as the appellate court dealing with the judgments of the trial court and the appellate court, exercising plenary powers under Article 136 of the Constitution, while directing retrial has ample jurisdiction to fix the place or the court which should undertake such exercise, keeping in view the needs of justice in a given case with the object of ensuring real, substantial, due and proper justice, and that too as an inevitable and necessary corollary of the decision to set aside the judgments of the courts below.

The direction given in the present case for transfer, though keeping in view normal principles governing claims for transfer, was really in exercise of powers as an appellate court with plenary and unlimited powers to do justice while dealing with an appeal under Article 136 of the Constitution and as an inevitable consequence of the appeals being allowed, the reasons for which would equally justify on their own the need for transfer outside the State as well. It is in essence an adjunctive power.

92. The applicant preferred OA 213/05 on 12.4.2005 challenging his supersession in promotion to DG rank, without preferring an appeal to Union of India. Annexure A-2, were copies of four major reports dated 24.4.02, 15.6.02, 20.8.02 and 28.8.02 submitted by the applicant in his capacity as the then ADG (Intelligence). When the respondent State

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Government informed that his name is kept in sealed cover, the OA was amended to challenge the placing of his name in sealed cover.

The respondent State Government had moved a M.A 644/05 stating that the question of jurisdiction of the Tribunal be decided as a preliminary issue as the departmental remedy has not been exhausted. The Tribunal rejected the contention that appeal was required to be first preferred for the reasons stated in the order dated 8.2.06 and posted the OA for final hearing on 18.4.06. The respondent Government of Gujarat and others preferred SCA 9571/06. The Hon'ble High Court issued Rule vide its order dated 2.5.06 and stayed further proceedings. The applicant preferred SLP (Civil) 8905/06. The Apex Court vide its order dated 12.5.06 stayed the impugned order of Hon'ble High Court. It further directed that the Tribunal may proceed with the hearing of the matters, but the final order may not be implemented.

93. Para 8(c) of the Relief Clause in OA.213/05 reads as under:-

"Declare that the impugned decision and order dated 23.02.2005 vide Notification NO.IPS/10-2005/681/B of the respondents No.1 to 5 and respondent No.5 in particular being an appointing authority issued by respondent No.3, of non-promotion of the applicant to the grade of Director General from present grade of

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Additional Director General of Police and his supercession by promoting respondent No.6 as violative of the principles and guidelines issued by respondent No.7 Union of India with respect of promotion of members of IPS in the State cadre dated 15.01.1999 vide No.45020/11/97-IPS-II, and arbitrary, irrational, discriminatory suffers from colourable power and authority, politically motivated, perverse, suffers from malafide, based on bias and prejudice, actuated out of sense of victimization and harassment and is therefore, violative of Article 14, 16, 21, 311 of the Constitution of India and is therefore, illegal and unconstitutional: AND be pleased to quash and set aside the same."

The applicant had moved MA.468/05 on 05.08.05 to amend the OA to challenge the decision of respondents to keep his name in sealed cover. The MA included both submissions and prayer for amendment of Relief Clause. The new relief clause 8 (H) reported later part of submissions in relief clause 8(c) suitably worded if necessary. The MA was contested. The Tribunal allowed the MA vide order dated 22.08.05.

94. The Members disagreed on the applicability of sealed cover proceedings. The Tribunal also held in para 31 that allegations or averments regarding malafide had become irrelevant as far as decision of OA was concerned. It noted that if sealed cover is opened and the applicant is found assessed fit for promotion these allegations will not only be irrelevant and meaningless but would be seen as having been made with some ulterior motive. These

pleadings were therefore directed to be deleted.

The matter was heard by Vice Chairman as a third Member. He answered the reference as under:

> "27. In view of the aforesaid discussions, I answer the issues as under:
>
> (a) A case instituted against a Government Servant on a private complaint filed in criminal court directly, also falls within the ambit of the guidelines dated 15.01.1999; and
>
> (b) the sealed cover procedure in such cases can only be resorted to on reaching the stage of framing of charges in sessions/warrant cases and on explaining the substance of accusations to the accused in a summons case and that too after obtaining sanction wherever necessary."

The State of Gujarat has reportedly filed a Special Civil Application.

95. The Shah Commission was initially set up as a one Member Commission. It was later made a two member commission consisting of Justice Nanavati a former judge of Supreme Court and Justice Shah. The Terms of Reference were also expanded to include additional terms of reference (a) regarding Role and Conduct of Chief Minister or any other Minister, Police Officers, other individuals and organisations in Godhra incident and subsequent incidents of violence in the aftermath of Godhra violence and (b) role and conduct of the then Chief Minister and/or any other Ministers: (i) in

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dealing with any political or non political organisation found to be involved in the events referred to above, (ii) in the matter of providing protection relief and rehabilitation to the victims of communal riots, (iii) in the matter of recommendations and directions given by NHRC from time to time.

96. The applicant has filed three affidavits, the first two under instructions of official superiors. He has been cross examined in respect of the first affidavit. The discussion with Secretary (Home)/G.P to Commission has taken place a few days before he was cross examined in respect of first affidavit. Whether the evidence tendered by the applicant should be accepted, having regard to the manner in which it was recorded. What weight should be given to his evidence and whether the version of applicant regarding Secretary, Home Shir G.C.Murmu and Shri Pandya, the State Govt. counsel telling the applicant the nature of evidence to be tendered and implied threats given to him etc. to deter him from telling the truth should be accepted and further action taken are matters within the domain of the Nanavati Shah Commission.

It is again only the Commission that can ascertain if other officers also have come forward

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to state things and the response of Govt.thereto. A report has been published in The Hindu . 04.09.07 (Delhi edition) under the Caption 'Nanavati panel reserves orders on summoning Narendra Modi'. The correspondent Manas Dasgupta reports that Commission on Monday directed the State G.P. to file objections, if any, by September 12 to its intention of questioning a few people on the authenticity of two CDs to establish the relevance of summoning Mr.Modi and others . The report indicates that CDs were given to the Commission by the then SP (CID) Rahul Sharma. The State had informed that such CDs do not exist. The CDs. as per the report contain details of over a million phone calls made to and from mobile phones of some Ministers, Sangh Parivar leaders and senior police officers.

Another report has been published in THE HINDU 22.09.07 (Delhi edition) under the caption "Two CDs existed, admits Gujarat Govt." The same correspondent reports "Government pleader Arvind Pandya, while submitting an affidavit giving details of how the CDs were obtained from the two major mobile service provides in the State, however, told the Commission that though the CDs were prepared at the behest of the Crime Branch police there was no records available with the

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Government about where the discs had gone"

98. We find that on an earlier occasion the explanation of the applicant had been called for and reminders were also issued. It appears that explanation has perhaps not been called for on this occasion. We note at the very outset that charge No.1 to 4 and 5 to 7 in respect of the diary and tape recorded evidence produced before the Commission. The applicant has, however, not been charged with violation of specific Rule 8(4) of AIS (Conduct) Rules but with violation of Rule 3 (1) which is the general rule.

99. Mr.Patel, learned counsel for applicant has drawn our attention to GOI instructions in respect of Central Govt. employees and quoted below Rule 3 in Sarkar's AIS Manual at page 109-111 (3rd edition 2005 reprint. These instructions have been referred to in para 16 above. These provide that if there is a violation of specific rule the Govt. servants should be proceeded against for violation of that rule and not the general rule. This was in addition to the argument that charge sheet could not have been issued at all in respect of evidence tendered before the Commission.

Mr.Doctor on the other hand had contended that

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the charge sheet has been issued with respect to disclosure of information and not in respect of evidence per se. Other contentions regarding authenticity of these documents obtaining of prior approval for opening of such register/tape recording of evidence etc. had also been raised.

100. The reason for not charging the applicant for violation of Rule 8(4) is not disclosed. It is stated in the written submissions that the Commission only is competent to disclose evidence. (Para 64 above).

Though the circular referred to by Mr.Patel has been quoted in AIS (Manual)it is in respect of CCS (Conduct) Rules. The circular issued in respect of other Central Govt. employees may or may not apply in the case of AIS Officers, who are governed by rules framed under the AIS Act. The State may or may not extend these instructions in respect of AIS officers under their control. But the instant circular appears to be based on a principle that applicant is required to be proceeded against for violation of specific rule. This would support the case of applicant that he is entitled to protection of Rule 8(4).

101. The articles of charges 1 to 4 are in respect

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of the diary and charges 5 to 7 are in respect of tape recording of evidence. Mr.Patel has also contended that act of tape recording of evidence cannot be said to be an act of misconduct and that it is well settled that if evidence is relevant the manner of obtaining the same is irrelevant. Mr. Doctor on the other hand has contended that the charge sheet is not in respect of evidence but in the manner of recording it or making it public. In any case the article of charges 6 & 7 show that evidence was published in March 2005 that is before tendering of evidence.

102 It is seen that charges 1 to 4 are in respect of the Register produced before the Commission and charge 5 is for tape recording of conversation with Mr.Murmu and Mr.Pandya.

~~102~~. We have come to the conclusion in para 67 above that departmental proceeding cannot be initiated on the ground of disclosure of evidence tendered before the Commission. These Article of charges are hit by this finding of Tribunal . There is also considerable force in the submission of counsel for the applicant that recording of conversation is only a modified version of keeping minutes of discussions.

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103. As regards charges 6 & 7 it has been contended that the conversation with Mr.G.C.Murmu, Secretary (Law & Order) and Shri Mr.Pandya was published in Tehelka and Dainik Bhaskar before the same had been tendered to the Commission by way of evidence on 09.04.05. The provision of Commission of Inquiry Act will not accordingly be attracted. It is also contended that the applicant did not disclose this evidence before the Commission at the time of cross examination on 31.08.04 or at the time of submission of second affidavit on 6.10.04.

We find that the said conversation is recorded on 25.08.04. The applicant refers to this fact that in the note to his letter dated 09.11.04. The applicant had also submitted in para 15 of this note that his supersession in promotion will transmit a negative and debilitating message. His name was kept in sealed cover and his junior K.R.Kaushik was promoted. As per the charge sheet the statement of both these persons is recorded only on 16.08.05. The said tape is tendered as evidence few days after. This charge sheet is issued four months after the tendering of that evidence and not in the intervening period.

104. We have concluded in para 96 above that this matter in the domain of Commission. We have

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referred in para 97 to the newspaper report regarding CDs produced by Shri Rahul Sharma, the then S.P. (CID).

105. We are accordingly of the view that the principles laid down in para 67 regarding bar to initiating disciplinary proceedings will apply in respect of articles of charges 6 & 7 also.

106. We also find that the applicant has been charged with violation of Rule 7 of AIS (Conduct) Rules in article of charge No.4. Neither the applicant nor the respondent have brought on record the said annexures. Extracts from the pleadings quoted in para 5(m) above show that they reported the announcement of Union Minister of Law that a panel of three Ministers was examining the content of the diary. No formal order issued by GOI setting up such a committee has been cited in support of the charge. Formal orders issued by Central Govt. have to conform to rules of transaction of business framed in accordance with specific provisions of the Constitution. Only newspaper reports cannot sustain such allegation.

107. This has to be seen in the context of protection conferred by Rule 8(3) of AIS (Conduct)

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Rules. We have held that AIS (Conduct) Rules are statutory rules. The language of rule 8(3) is similar to Section 6 of the Commission of Inquiry Act.

108(a) We find that charge 8 is in respect of evidence tendered before the Commission with his affidavit dated 15.07.02. The applicant has also been charged with violation of Section 5 of Official Secrets Act, which is a criminal offence. These affidavits are secret communications of SIB, GOI and a TPM of MHA. The letter forwarding the affidavit was marked to D.G. Cum IG(P) also. The charge sheet refers to email dated 17.08.05 of the then DG(P).

(b) The learned counsel for the applicant has stated in his written argument that this charge is intimately connected to other charges and if this article of charge falls then the entire charge sheet will fall. He has placed reliance on certain decisions.

(c) We have also referred to in para 72 above the decision of Apex Court regarding Government transacting its business in a open and transparent manner, the changes brought about by the Right to Information Act and the opinion expressed by Justice A.H. Saikia in his article under the Right

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to Information Act.

109. Our conclusion in para 61, that Section 6 of Commission of Inquiry Act is a complete bar will apply in respect of this article of charge. If the charges are inter linked then this charge cannot be severed. Whether this article of charge can be severed or not there is a complete non-application of mind in including this article of charge.

110. We note that charge 9 is in respect of keeping secret reports of State I.B. and annexing them evidence produced before the Tribunal in the previous round of litigation. The statement of imputation refers to annexure of earlier OA. Annexure A-2 to the said OA are copies of (i) Analytical note on current communal scenario dated 24.04.02 , (ii) Letter dated 15.06.02 addressed to Additional Secretary(Home) with reference to his letter dated 14.06.02 with copy to D.G.(P), (iii) Letter dated 20.08.02 on current law and order situation to ACS (Home) with copy to DG(P) and (iv) Letter dated 28.08.02 to ACS (Home) with copy to DG(P). We have noted in para 4(c) above that all these letters have been enclosed with second affidavit. The forwarding letter is also extracted. A copy of the same is marked to DG-cum-IG(P) and Principal Secretary(Home). This letter shows that the affidavit relates to areas of responsibility of

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State Intelligence Bureau with reference to expanded terms of reference. Why was he and not the present incumbent asked to file the reply is not clear. It is well settled that even if secret documents have been produced with an application the State has to fist accept or deny the existence of such documents. The Apex Court in S.P.Gupta and Another vs. UOI AIR 1982 SC 149 has held that it is for the Courts to do a balancing exercise and finally take a decision in this regard.

111. In view of the above position, the respondents could not have framed the charges in respect of documents produced in the previous round of litigation. Besides this as these documents have been produced before the Commission the bar of Section 6 is attracted.

112. Charges 1 to 4 are in respect of diary and 5 to 7 are in respect of tape recording of conversation with Mr.G.C.Murmu Secretary, Law and Order and Shri Arvind Pandya, Govt. Counsel to the said Commission. Both these evidences have been produced before the Commission with the third affidavit dated 09.04.05. Charge 8 in respect of evidence produced with the first affidavit. Charge 9 is in respect of evidence produced before the Tribunal. This was earlier produced before the

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Commission with the second affidavit. These have been filed in official capacity. Copies of letters forwarding the affidavit had been sent to DG cum IGP on first occasion and to Principal Secretary (Home) and DG cum IGP on second occasion. We have held that (a) Kehar Singh lays down a substantive law (b) disciplinary proceedings are civil proceedings within the meaning of Section 6 of Commission of Inquiry Act, (c) action could not have been taken under law in respect of their publication as what could not be done directly could not have been permitted to be done indirectly. We have accordingly come to the conclusion that the applicant could not have been charged with any of these articles. We have refrained from expressing any final opinion on the facts as the same was not necessary and as all/some of these matters may be before the Commission of Inquiry. However, malice in law is established.

113. Rule 6(2) of AIS (Death cum Retirement Benefit) Rules 1958 shows that no gratuity or death cum retirement gratuity is payable till the conclusion of pending proceedings and issue of final orders thereon. Proviso to Rule 3 (1) of AIS (Commutation of Pension) Regulations 1959 indicates

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that commutation of pension cannot be made under such circumstances.

114. The Apex Court in para 6 of Upendra Singh's judgment has held that Tribunal can interfere only if on the charges framed no misconduct or other irregularity can be said to have been made out or if the charges are contrary to law. The Apex Court in Ram Singh Ex Constable (supra) has held that misconduct receives connotation from context of delinquency in performance and its effect on discipline and nature of duty. The ambit has to be construed having regard to the scope of statute and public purpose it seeks to serve. We have held that the charges 1 to 4, 5 to 7, 8 & 9 are contrary to public policy laid down in Section 6 of Commission of Inquiry Act. Charge 9 is also for production of records before the Tribunal in the previous round of litigation. The then CJI in para 133 of the decision in State of Karnataka (supra) that in the case of responsibilities between Minister/Civil Servant a Commission is the appropriate forum.

115. The above ratio of **Upendra Singh** as reiterated in Kummu Setty Satyanarayana applies to the facts of this case. The decision in **Tandon**

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Brothers (supra), which has also been referred to by Justice C.K.Thakkar in his book lays down that if the order is contrary to law it can be set aside on the ground of justice equity and good conscience.

11. The charge sheet is accordingly quashed. The OA is allowed. No costs.

-Sd-

(D.Sankaran Kutty)
Member (J)

-Sd-

(Shankar Prasad)
Member (A)

तयार करनेवाली
Prepared by 11.10.07
मिलान किया
Compared by
सही प्रतिलिपि
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11/X/07
अनुभाग अधिकारी (न्या.)
Section Officer (J)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अहमदाबाद न्यायपीठ
Ahmedabad Bench

ab/vtc

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Annexure B. 207

Confidential

No. ENQ / 252005 /958/G
Government of Gujarat,
Home Department,
Sachivalaya, Gandhinagar.
Dt.- 6 SEP 2005

MEMORANDUM

The State Government propose to hold an inquiry against Shri R.B. Sreekumar, Additional D.G.P. (Police Reforms) IPS (GJ-1971) under Rule 8 of All India Services (Discipline & Appeal) Rules, 1969. The substance of the imputations of misconduct and misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputations of misconduct or misbehavior in support of each article of charge is enclosed. (Annexure-II) A list of documents by which and the list of witnesses by whom, the articles of charges are proposed to be sustained are also enclosed (Annexure-III & IV).

2. Shri R.B. Sreekumar is directed to submit a written statement of his defense within 30 days from the receipt of this memorandum and also to state whether he desires to be heard in person.

3. He is also informed that an inquiry will be held only in respect of those articles of charges which are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri R.B. Sreekumar is further informed that if he fails to submit a written statement of his defense before the date specified in Para-2 above or having expressed his desire to be heard in person does not appear in person before the Inquiry Authority that may be appointed by the State Government or otherwise fails or refuses to comply with the provisions of Rule 8 of the All India Services (Discipline & appeal) Rules, 1969 or the orders or directions issued in pursuance of the said rules, the Inquiry Authority may hold the inquiry against him ex parte.

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A.B. Act.

5. Attention of Shri R.B. Sreekumar is invited to Rule 18 of All India Services (Conduct) Rules, 1968 under which no member of the service shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of the matters pertaining to his services under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri R.B. Sreekumar is aware of such a representation and that it has been made at his instance, and action will be taken against him for violation of Rule 18 of the All India Services (Conduct) Rules, 1968.

6. The receipt of the memorandum may be acknowledged.

By order and in the name of the Governor of Gujarat,

(K.C.Kapoor)
Principal Secretary to Government of Gujarat,
Home Department.

TO,
Shri R.B. Sreekumar, Additional D.G.P.(Police Reforms),
(Through: D.G.& I.G. of Police., Gujarat State, Gandhinagar)

Encl:
1. Article of Charge-Annexure-I,
2. Statement of imputations-Annexure-II,
3. List of documentary evidences - Annexure-III,
4. List of witnesses. –Annexure-IV.
5. Copies of documents.

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Secretariat, Gandhinagar.

ANNEXURE-I

(Articles of Charges against Shri R.B. Sreekumar, IPS)

Shri R. B. Sreekumar during his tenure as Additional D.G.P. (I.B.) from 6/4/2002 to 18/9/2002 and as Additional D.G.P. (PR) from 19/9/2002 has committed following serious misconduct and/or misbehavior.

Charge -1

Shri R. B. Sreekumar through his representatives knowingly, falsely claimed in Press and Media Conference a "private" diary (The contents whereof are not admitted) to be an "official" diary written by him during his tenure as Additional DGP, which conduct of his is unbecoming of a member of the service under Rule–3(1) of All India Service (Conduct) Rules, 1968.

Charge-2

Before making public disclosure of the said diary in Press and Media, no permission of any higher authority was obtained by Shri R.B. Sreekumar, which conduct of his is unbecoming of a member of the service under Rule 3(1) of All India Services (Conduct) Rules, 1968.

Charge -3

Shri R. B. Sreekumar made public disclosure of the said private and unauthorised diary before press and media through his representatives, with an ulterior motive to malign higher officers/authorities and State Government and tarnish their reputation/image out of vindictiveness as he was not promoted to the rank/grade of Director General of Police. This conduct of Shri

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Secretariat

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R.B.Sreekumar is unbecoming of a member of the service and thereby he violated Rule 3(1) of All India Service (Conduct) Rules, 1968.

Charge -4

Shri R. B. Sreekumar through his representatives made a statement in Press and Media Conference with regard to the said alleged "official" diary and contents thereof which had the effect of an adverse criticism of the State Government and which was capable of embarrassing the relations between the Central Government and State Government. This conduct of Shri R.B.Sreekumar is unbecoming of the member of the service and thereby he violated Rule 3(1) and 7 of All India Service (Conduct) Rules, 1968.

Charge -5

Shri R.B. Sreekumar clandestinely, unauthorisedly and illegally recorded conversation with Secretary (Law & Order), Home Department Mr. Murmu and Special Government Counsel Mr. Pandya, which conduct of his is unbecoming of a member of the service and thereby he violated Rule 3(1)of All India Service (Conduct) Rules, 1968.

Charge-6

Shri R.B. Sreekumar unauthorisedly parted with the said illegally and unauthorisedly recorded conversation as aforesaid to the Press and Media without obtaining permission of higher authorities, which conduct of his is unbecoming of a member of the service under Rule 3 (1) of All India Service (Conduct) Rules, 1968.

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Secretary to Government
Sachivalaya, Gandhinagar.

Charge 7

The illegal and unauthorised recorded conversation as mentioned in Charge -5 was unauthorisedly parted with media by Shri R.B. Sreekumar through his representatives with an ulterior motive to enable media to publish distorted version thereof with a view to malign Secretary (Law & Order), Home Department Mr. Murmu, Special Government Counsel and State Government as a whole and tarnish their image and reputation in the eyes of public, which conduct of his is unbecoming of a member of the service under Rule 3 (1) of All India Service (Conduct) Rules, 1968.

Charge -8

Shri R. B. Sreekumar did not obtain the required permission from the competent authorities before producing secret communications/reports from Subsidiary Intelligence Bureau (SIB) Ministry of Home Affairs, Government of India, dated 14/3/2002, 26/3/2002, 28/3/2002, 22/4/2002 20/5/2002 and TP Message from Ministry of Home Affairs, Government of India dated 31/5/2002 along with his affidavit dated 15/7/2002 before the Hon'ble Commission of Inquiry of Mr. Justice Nanavati and Mr. Justice Shah. This conduct of Shri R.B. Sreekumar is unbecoming of a member of the service and thereby he violated Rule 3(1) of All India Service (Conduct) Rules, 1968 and section 5 of The Official Secrets Act,

Charge -9

Shri R.B. Sreekumar, upon his transfer from Addi.DGP (IB), to Addi. DGP(PR) on 18/9/2002, kept copies of secret reports of I.B. in his possession without permission of higher authorities as it is evident from his original

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Application No. 213/2005 filed with Hon'ble Central Administrative Tribunal, Ahmedabad. Shri R.B. Sreekumar produced copies of such secret documents as Annexure A-2 to O.A. No.213/2005 without taking permission of higher authorities. This conduct of Shri R.B. Sreekumar is unbecoming of a member of the service and violative of the provisions of section 5 of Official Secrets Act, 1923 and Rules 3(1) and 9 of AIS (Conduct) Rules, 1968.

(K.C.Kapoor)
Principal Secretary to Government of Gujarat,
Home Department.

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Section Officer
Home Department
Sachivalaya, Gandhinagar.

Annexure - II

Statement of Imputation of Misconduct or Misbehavior by Shri R.B.Sreekumar, IPS

Charge -1

(i) Chapter – VI Volume-3 of Gujarat Police Manual, 1975 under the caption 'DIARIES, REVIEWS ETC.' deals with diaries to be maintained by police officers of different ranks. That none of the rules contained in the said chapter provides for maintaining of a diary by police officers of the Rank of Additional Director General of Police.

(ii) Apart from the fact that none of the rules requires any diary / register to be maintained as aforesaid, there has been no practice of maintaining any diary / register for recording verbal instructions received from higher officers. Additional Director General of Police, CID (Intelligence Bureau), Gujarat State, Shri J. Mahapatara, (immediate successor-in-office of Shri R. B. Sreekumar) and Additional Director General of Police, CID (Crime and Railway) Gandhinagar, Shri G.C. Raigar (immediate predecessor-in-office of Shri R. B.Sreekumar) both vide their letters dated 02/08/05, have certified that no officer in CID (Intelligence Bureau) maintains diary / register to record verbal instructions received from higher officers. Both of them have also certified in their aforesaid letters that they are/were not maintaining any diary / register for recording verbal instruction received from higher officers.

(iii) Shri R.B.Sreekumar has not obtained any approval from higher authorities for maintaining a diary / register. Shri R.B.Sreekumar has also not

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intimated to the higher authorities about maintaining of any diary / register by him.

(iv) Rule 178 (14) of Gujarat Police Manual Volume -III, 1975 requires that whenever an officer is transferred or retires, he is required to hand over all 'official' records to a new incumbent. Shri R. B. Sreekumar was transferred on 18/9/2002 from the post of Additional Director General of Police (Intelligence Bureau) to Additional D.G.P. (PR). Shri J. Mahapatra took over charge of the said post from him. At the time of handing over the charge, Shri R.B.Sreekumar has not handed over any diary / register which he claims to be an 'official' diary, to Shri J. Mahapatra. The statement of Shri J. Mahapatra in this behalf is relied upon. Therefore the claim made by Shri R.B.Sreekumar through his representatives that the diary is an official one is far form the truth and is misleading.

(v) It is an established practice of the Police Department that copies of the diaries / registers of police officers of the various ranks are periodically submitted for review and direction of higher authorities. Shri R. B. Sreekumar has not submitted a copy of diary / register to his higher authorities which he claims to be an 'official' diary.

(vi) Rule 3(3)(iii) of AIS (conduct) Rules, 1968 requires that if verbal instructions are received by subordinate officer from his superior official, the subordinate officer is required to seek confirmation of such verbal instructions from his superior officer from whom such verbal instructions are received. Shri R.B.Sreekumar had never sought confirmation of the contents of the alleged

diary / register from higher authorities by placing the same before them or otherwise.

(vii) That Stores Department maintains record of issuance of diary / register. It is confirmed from the statement of Storekeeper Shri Vora that no such diary / register was issued to Shri R.B.Sreekumar.

(viii) Shri R.B.Sreekumar has claimed that the alleged diary / register was certified by Shri. O.P. Mathur who is currently holding the post of Additional Director General of Police (Communication) Gujarat State, Gandhinagar. Shri O.P.Mathur, an IPS Officer, is junior to Shri. R.B.Sreekumar. He has clarified by his letters dated 16/4/2005 and 02/08/05 that certification was only in respect of total number of unwritten pages of the said diary / register and his signature does not in any way convey the authenticity of whatever is recorded in the said diary / register.

(ix) Shri R.B. Sreekumar had never disclosed prior to 9/4/2005 and that he had maintained the diary / register, which leaves no doubt that the so called 'Diary' was not an 'official' diary /register maintained by him during his tenure as Additional Director General of Police (I.B.). Yet Shri R.B.Sreekumar has claimed the said 'diary' to be an 'official' diary.

Charge – 2

Articles appeared in Gujarati daily news papers 'Sandesh', 'Jansatta' and 'Mumbai Samachar' dated 24/4/05 and in English daily news papers 'Indian Express" and 'Times of India' dated 24/4/2005 with photographs and

news item telecast by AAJ TAK News Channel , DD NEWS Channel and E TV (Gujarati) Channel wherein the said so-called diary / register in question was claimed by Shri R.B.Sreekumar to be an 'official' diary, containing secret informations. It is further claimed that the said 'diary' was shown to press by representatives of Shri R.B.Sreekumar without obtaining permission from higher authorities.

Charge – 3

A meeting of the Departmental Promotion Committee took place on 12/2/2005 to consider promotion of eligible police officers from the grade of Additional Director General of Police to the grade of Director General of Police, wherein the Departmental Promotion Committee had put their recommendation with regard to Shri R.B.Sreekumar in sealed covered in view of pending criminal proceedings against him. Shri K.R.Kaushik junior to Shri R.B .Sreekumar, was therefore promoted to the post of Director General of Police on 23/2/2005. At this juncture, as a sequel to non-granting of promotion to him, Shri R. B. Sreekumar started claiming a private diary stated to have been maintained by him, claiming the same to be an official diary, during his tenure as Additional DGP from 6/4/2002 to 18.9.2002 and disclosed the same as late as on 9/4/2005 and afterwards to the media, with the ulterior motive of maligning his superior officers, including the Ministers and the State Government. The time and manner in which it was disclosed to the media indicates that he had deliberately tried to malign higher authorities. Page – 2, 3, 4, 5, 12 and 20 of the said diary, claimed to be an 'official' diary by Shri R.B.Sreekumar contains allegations, averments and statements which have

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the effect of adverse criticism of State Government. Shri R.B.Sreekumar criticised the State Government in the said unauthorised diary and made the same public by way of disclosure to the media and tried to malign the state government.

Charge -4

Shri R.B.Sreekumar criticised the State Government in the said unauthorised diary and made the same public by way of disclosure to the press and media and tried to malign the State government. It is reported in the Gujarati daily news papers 'Gujarat Samachar', 'Gujarat Today' and 'Sandesh' dated 26/5/2005 and English daily newspaper 'Times of India' dated 26/5/2005 that the Cabinet of central Government has appointed a committee to look into the claims made by Shri R.B.Sreekumar with regard to the said diary / register which was capable of embarrassing relation between State Government and the Central Government).

Charge- 5

Shri R.B.Sreekumar had called on Mr. Murmu Home Secretary (Law & Order), to arrange a meeting with Special Government Counsel Mr. Arvind Pandya before giving deposition before Justice Nanavati & Justice Shah Commission. Mr. Murmu had accordingly arranged a meeting on 25/8/2004 at GNFC Office, Royal Manor House, Ahmedabad. Conversations in the said meeting were tape-recorded by Shri R.B.Sreekumar without prior permission of any higher officer. Shri R.B.Sreekumar had also not disclosed either to Mr. Murmu or to Shri. Arvind Pandya that he was tape-recording their conversations.

Charge -6

The conversations with Secretary (Law & Order), Home Department Mr. Murmu and Special Government Counsel Mr. Pandya were tape-recorded unauthorisedly. A newspaper, called 'Tehlka' published part of the said conversation tape-recorded by Shri R.B.Sreekumar in their publication dated 12/3/2005. The said part of conversations amongst Shri R.B.Sreekumar, Mr. Murmu and Shri Arvind Pandya could not have been published by Tehlka, unless and until same was parted with by Shri R.B.Sreekumar. Shri R.B.Sreekumar had not obtained any permission from any higher authorities before parting with such tape-recorded conversation in favour of Tehlka or any other person. The factum of time at which it is parted with in favour of media, indicates that the same was parted with an ulterior motive to enable the media to publish distorted version thereof with a view to maligning Secretary (Law & Order), Home Department Mr. Murmu, Special Government Counsel and State Government as a whole and tarnish their image and reputation in the eyes of public.

Charge -7

The conversations with Secretary (Law & Order), Home Department Mr. Murmu and Special Government Counsel Mr. Pandya were tape-recorded unauthorisedly. A newspaper, called 'Tehlka' published part of the said conversation tape-recorded by Shri R.B.Sreekumar in their publication dated 12/3/2005. The said part of conversations amongst Shri R.B.Sreekumar, Mr.

Sachivalaya, Gandhinagar.

Murmu and Shri Arvind Pandya could not have been published by Tehlka, unless and until same was parted with by Shri R.B.Sreekumar. Shri R.B.Sreekumar had not obtained any permission from any higher authorities before parting with such tape-recorded conversation in favour of Tehlka or any other person. The factum of time at which it is parted with in favour of media, indicates that the same was parted with an ulterior motive to enable the media to publish distorted version thereof with a view to maligning Secretary (Law & Order), Home Department Mr. Murmu, Special Government Counsel and State Government as a whole and tarnish their image and reputation in the eyes of public.

Charge -8

Shri R.B. Sreekumar had filed an affidavit before Hon. Justice Nanavati and Justice Shah Commission on 6-7-2002 and with this affidavit, he annexed some secret documents of Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India dated 14/3/2002, 26/3/2002, 28/3/2002, 22/4/2002,20/5/2002 and T.P. message from Ministry of Home Affairs Govt. of India dated 31/5/2002 along with his affidavit. Shri R.B. Sreekumar thereby violated the provisions of section 5 of the Official Secrets Act, 1923. Moreover, as per section 123 of the Indian Evidence Act, no one is permitted to give any evidence derived from unpublished official record relating to any affairs of the State except with the permission of the Head of the Department concerned who may give or withhold such permission as he thinks fit. Shri R.B.Sreekumar has not sought such permission.

Charge-9

Shri R.B.Sreekumar upon his transfer from Additional D.G.(I.B.) to Additional D.G.(P.R) on 18/9/2002 could not have kept copies of secret reports of State I.B. in his possession without obtaining permission of the higher authorities. As per the provision of Rule 178 (14) of Gujarat Police Manual Part – Volume - 3, 1975 he should have handed over all the documents in his possession to his successor-in-office. Instead, Shri R.B.Sreekumar retained these documents unauthorisedly with him as is evident from his O.A. mo 213/2005 filed before the Hon'ble CAT, Ahmedabad. Shri R.B.Sreekumar annexed copies of secret documents as Annexure A-2 with the said application without taking permission from higher authorities.

(K.C.Kapoor)
Principal Secretary to Government of Gujarat,
Home Department.

Sachivalaya, Gandhinagar.

Confidential	Departmental inquiry against Shri R.B. Sreekumar, IPS

Annexure – III

List of Documentary Evidences

1.	A copy of falsely claimed private diary written by Shri Sreekumar annexed with O.A. No. 213/2005 in the Hon. CAT
2.	A Statement of Shri J. Mahapatra, Add D.G., (I.B.) dated 2/8/2005
3.	Statement of Shri G. C. Raigar, Ex-Addi.D.G., (I.B.)dated 2/8/2005
4.	A letter(by E Mail) of Shri K. Chakravarthy, The Then Director General of Police. Gujarat State, dated 18 /8/2005
5.	A Statement of Shri J. Mahapatra, Add D.G., (I.B.) dated 17/8/2005
6.	Statement of a Store Keeper Shri K.R.Vora of I.B.6/7/2005
7.	A Statement of Shri O.P. Mathur, Add D.G., Communication dated 16-4-2005
8.	A Statement of Shri O.P. Mathur, Add D.G., Communication dated 2-8-2005
9.	A copy of first affidavit by Shri R.B.Sreekumar before Hon. Justice Shah and Nanavati Commisssion, Ahmedabad
10.	A copy of second affidavit by Shri R.B.Sreekumar before Hon. Justice Shah and Nanavati Commisssion, Ahmedabad
11.	A copy of third affidavit by Shri R.B.Sreekumar before Hon. Justice Shah and Nanavati Commisssion, Ahmedabad
12.	A copy of O.A. No. 213/2005 filed in Hon. CAT, Ahmedabad Bench by Shri R.B.Sreekumar
13.	A Press Clipping of News Paper Sandesh dated 24-4-2005.
14.	A Press Clipping of News Paper Jansatta dated 24-4-2005
15.	A Press Clipping of News Paper Indian Express dated 24-4-2005
16.	A Press Clipping of News Paper Times of India dated 24-4-2005
17.	A Press Clipping of News Paper Mumbai Samachar dated 24-4-2005
18.	Video clipping of DDNEWS and India T.V. Channel News
19.	A Press Clipping of News Paper Times of India dated 26-5-2005 about reporting of appointment of committee constituted of 3 Cabinet Ministers of GOI
20.	A Press Clipping of News Paper Gujarat Samachar dated 26-5-2005 about reporting of appointment of committee constituted of 3 Cabinet Ministers of GOI
21.	A Press Clipping of News Paper Gujarat Today dated 26-5-2005 about reporting of appointment of committee constituted of 3 Cabinet Ministers of GOI
22.	A Press Clipping of News Paper Sandesh dated 26-5-2005 about reporting of appointment of committee constituted of 3 Cabinet Ministers of GOI

23.	A copy of verbatim version (As claimed by Shri R.B.Sreekumar) of the meeting held by Shri G.C.Murmu Secretary(Law and Order) Home Department and Shri Arvind Pandya Govt. Pleader on 24-8-2004 annexed with an affidavit filed by Shri R.B. Sreekumar on dated 9/4/2005 in Hon. Justice Shah and Nanavati Commisssion, Ahmedabad
24.	News Item published in the Tehlka Peoples Paper dated 12/3/2005
25.	News Item published in the Divya Bhaskar dated 4/3/2005
26.	A Statement By Shri Arvind Pandya Senior Government Council Dated 16/8/2005.
27.	A Statement By Shri G. C. Murmu Secretary (Law and Order) Dated 16/8/2005.
28.	A copy of forwarding letter to file an affidavit by Shri R.B. Sreekumar on dated 15/7/2002 in Hon. Justice Shah and Nanavati Commisssion, Ahmedabad
29.	Secret T.P. Message of Ministry of Home Affairs dated 31/5/2002 annexed with affidavit filed by Shri R.B. Sreekumar on dated 15/7/2002 in Hon. Justice Shah and Nanavati Commisssion, Ahmedabad
30.	Secret messages Subsidiary Intelligence Bureau dated 14/3/2002, 26.3/2002, 28/3/2002, 22/4/2002 and 20/5/2002 annexed with affidavit filed by Shri R.B. Sreekumar on dated 6/7/2002 in Hon. Justice Shah and Nanavati Commisssion, Ahmedabad
31.	A copy of Secret reports of State I.B. dated 24/4/2002,15/6/2002, 20/8/2002, 28/8/2002 annexed with O.A 213/2005 in the Hon. CAT.

(K.C.Kapoor)
Principal Secretary to the Govt. of Gujarat,
Home Department.

Home Department
Sachivalaya, Gandhinagar.

Confidential

Departmental inquiry against Shri R.B. Sreekumar, IPS

Annexure – IV

List of Witnesses

(1) Shri O.P. Mathur, Addi. D.G.(Communication), Gandhinagar
(2) Shri G.C.Murmu, Secretary, (Law & Order), Home Department.
(3) Shri K.R.Vora ,Store In Charge, Office of the Addi. D.G.P.(IB) Gandhinagar.
(4) Shri Arvind Pandya, Govt. Pleader.
(5) Shri G.C.Raigar, Addi. D.G.P.(Armed Units), Gandhinagar.
(6) Shri J. Mahapatra, Addi D.G.P.(I.B.) Gandhinagar.

(8) Shri Shailesh Solanki, Press Photographer of Sandesh News Paper.
(9) Shri Rajinder Kumar, Joint Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Ahmedabad, Gujarat.
(10) Shri P.R.Dhiman, Under Secretary, Ministry of Home Affairs, New Delhi.
(11) Shri K. Chakravarthi, Ex – DGP, Gujarat State.

(K.C.Kapoor)
Principal Secretary to the Govt. of Gujarat,
Home Department

Section Officer
Home Department
Sachivalaya, Gandhinagar.