PETITIONER:
STATE OF MADHYA PRADESH

Vs.

RESPONDENT:
AJAY SINGH AND ORS. ETC.

DATE OF JUDGMENT02/11/1992

BENCH:
[J.S. VERMA AND S.P. BHARUCHA, JJ.]

ACT:
COMMISSIONS OF INQUIRY ACT, 1952:
Sections 3, 7 and 8-A One-man commission- Replacement of the initial appointee with another person-Whether permissible under the scheme of the Act-Whether Permissible under the scheme of the Act-whether Section 21 of the General Clauses Act, 1897 could be invoked to read such power into the Act.

HEADNOTE:
General Clauses Act, 1897:
Section 21-Power to add to amend or vary or rescind any notification-Whether could be invoked to reconstitute the Commission of Inquiry by replacement of substitution of the existing members, though not provided in the scheme of the Act.
Pursuant to the direction given by the State High Court, the appellant-State by a Notification dated 24.2.1989, constituted a Commission of Inquiry under the (Commission of Inquiry) Act, 1952, to investigate into the affairs of the children's Welfare Society, of which Respondent No.1 was an office bearer and appointed a sitting Judge of the High Court of another State as the sole member of the Commission. The inquiry was to be completed within a period of six months, but the period was extended from time to time. Meanwhile, the sole member became due to retire as a Judge of the High Court on attaining the age of superannuation and, therefore, he wrote a letter dated 19 3.1991 to the Chief Secretary of the appellant-State drawing attention to this fact and requesting that the necessary modalities be worked out well in time for his continuance as Commission of Inquiry, in the light of the guidelines issued by the Government of India for the benefits and emoluments payable to a Judge on his retirement in such a situation. The Judge also mentioned some of the facilities he expected, to which be would not be entitled from the State Government on his retirement. The Chief Secretary sent a reply dated 9.4.1991 to the Judge promising to give an early reply and requesting him to continue with the inquiry so that the same could be completed early. However, without further reference to the Judge, the State Government issued a notification dated 10.7.1991, replacing him by a retired Chief Justice of another High Court. This appointment was challenged before the High Court, which, by an interim order dated 30.7.1991 stayed the operation of the notification. During the pendency of the writ petition, the new member tendered his resignation. Consequently, the High Court dismissed the writ petition as infructuous on 5.9.1991. Thereafter, the Chief

Secretary to the Government sent a letter dated 12.9.1991 to the original appointee expressing the State Government's inability to accept the terms and conditions of the Judge, and informing him of the appointment of retired Chief Justice of another High Court, who had since resigned.

Thereafter the State Government issued another notification dated 9.1.1992 appointing a retired Judge of another High Court as a single member of the Commission. This was challenged before the High Court on the ground that during the continuance as the single member of the Commission of Inquiry of the original appointee, there was no power in the State Government to replace him, and there being no vacancy in the office, the power under Section 3(3) of the Commissions of Inquiry Act, 1952, which was available only to fill any vacancy, could not be invoked and there was no other source of power available to the State for the purpose and, therefore, the appointment first of the retired Chief Justice and then, on his refusal, of another retired Judge, being without any authority, was invalid.

The High Court allowed the writ petitions and quashed the notification dated 9.1.1992. It held that there was no vacancy in the office of the single member of the Commission to empower the State Government to fill the vacancy under Section 3(3) of the Commissions of Inquiry Act. It also held there was neither any valid reason or ground nor any power available in the State Government to replace the original member by another person as was purported to be done by first appointing one member and then another member, both of whom were also retired Judges .

In the appeals, by special leave, on behalf of the State Government, it was contended that aid of Section 21 of the General Clauses Act was available to the State Government for exercising its powers under the Commissions of Inquiry Act 'to add, to amend or vary' the notification issued initially appointing the sitting Judge as the sole member of the Commission which enabled the State Government to reconstitute the Commission by replacing that Judge with any other person in the circumstances of the case, though the power to rescind any notification was not available, since this was provided in Section 7 of the Commissions of Inquiry Act. Reference was also made to Section 8-A of the Commissions of Inquiry Act to support the Contention that Government's power to reconstitute the Commission even during the availability of the person so appointed even though it was submitted that Section 8-A was not the source of power for reconstitution of the Commission. It was also contended that the Government's power to extend the time specified in the initial notification for Completing the work of the Commission was not to be found in any express provision in the Commissions of Inquiry Act. but was exercised by amendment of the initial notification only under Section 21 of the General Clauses Act. and that though there was no express provision in the Commissions of Inquiry Act empowering the Government to replace or substitute the sole member of a Commission with another person during the continuance of the Commission. this was implicit in the power to appoint a Commission and designate its personnel under Sub sections (1) and (2) of Section 3 of the Commissions of Inquiry Act read the power to amend or Vary any notification available under Section 21 of the General Clauses Act.

It Was submitted on behalf of the petitioner in the Public Interest Petition that Sections 14 and 16 of the General Clauses Act were also available to support the notifications under challenge issued by the State

Government.
On behalf of respondent No.1 it was submitted that the scheme of the Commissions of Inquiry Act did not permit invoking Section 21 of the General Clauses Act except for enlargement of the period for completion of the inquiry by amendment of the notification only to that extent since the only situations in which reconstitution of the Commissions could be made were provided in the Commissions of Inquiry Act itself, that Section 8-A of the Commissions of Inquiry Act was enacted for an entirely different purpose namely to ensure continuity of the Commission's work and had nothing to do with its reconstitutions that the scheme of the enactment showed that the appropriate Government could not interfere provide expressly in the statute for the Government's power to fill any vacancy after the initial constitution After its insertion the scheme of the enactment excludes the power of reconstitution of the Commission in a manner not expressly provided therein. In view of sub-section (3), it is not permissible to construe sub-sections (1) and (2) of Section 3 in any other manner. If the scheme of the enactment gave such wide power to reconstitute a Commission after its initial constitution and permitted replacement or substitution of the existing member of a Commission with another person sans sub-section (3) of Section 3 the power to fill any vacancy was not required to be provided separately and expressly. It is also significant that in the amendment so made the power is limited only to filling any vacancy without conferring any power to reconstitute the Commission by replacement or substitution of the existing member which indicates that no such power of replacement or substitution of the existing member was contemplated in the scheme of the Act or intended to be conferred on the Government even after the amendment.
[298-H: 299-A-C; 300-A]
2 7. Section 8-A was simultaneously inserted by amendment to provide that the procedure does not require interruption of the inquiry by reason of change in the constitution of the Commission due to filling any vacancy or decrease in the number of members. The expression 'or by any other reason' in sub-section (2) of Section 8-A cannot be widened to include the reason of reconstitution of the Commission by replacement or substitution of the existing member since that power is not available to the Government in the scheme of the Act and, therefore. this expression in Section 8-A(2) cannot be read as conferring any additional power or giving any such indication. The expression or by any other reason following 'vacancy having been filled' in Section 8-A(2) must therefore. mean any other reason such as decrease in the number of members when the initial number is more than one and the vacancy remains unfilled. It cannot mean substitution of the existing member with another person, since no such power exists. Section 8-A(2) is not the source of an additional power, but merely an indication of the power to reconstitute the Commission. The indication is of the power of reconstitution being available only in the manner indicated. The only situation in which the Government can rescind the notification issued under Section 3 constituting the Commission is laid down in Section 7 the Act, which provides that the Commission would cease to exist when the appropriate Government by notification with the working of the Commission after its constitution except in the manner expressly provided in the Act and Section 7 was a clear indication that interference with the functioning of the Commission was not permissible in any other manner, and, therefore, Section 21 of the General Clauses Act was not

available to support the Government's action in the instant case.

Dismissing the appeal, this court,

HELD: 1. The power under Section 3(3) of the Commissions of the Inquiry Act, 1952, was not available to the State Government in the facts of the instant case to appoint any other person replacing the original member as the sole member of the Commission of Inquiry. The power under sub-sections (1) of (2) of Section 3 read with Section 21 of the General Clauses Act or even Section 14 or Section 16 thereof was also not available for the purpose. Accordingly, the notifications dated 10.7.1991 and 9.1.1992 issued by the State Government appointing the retired Chief justice and another retired Judge were both invalid. The high Court was, therefore, right in quashing the notifications dated 10.7.1991 and 9.1.1992. The appellant-state should, in view of the retirement of the original member as a judge of the High Court in the meanwhile, take necessary action to finalise his terms and conditions in accordance with the guidelines issued by the Government of India in this behalf. Such action should be taken promptly to avoid any undue delay in completion of the commission's task. [304-C-F]

2.1. The power of the Government to appoint a Commission of Inquiry and name the person or persons constituting it is in sub-section (1) of Section 3. It is not as if sub-section (1) deals with the mere appointment of the Commission of Inquiry without clothing it with its personnel and the power to appoint the member/members thereof is to be found only in sub-section (20 That apart, there is nothing in any of these provisions to suggest that the Government has the power to reconstitute the commission after its appointment by replacing the existing sole member with another person. Sub-Section (3) of Section 3, inserted by the Amendment Act of 1971, deals expressly with the Government's power to fill any vacancy which may have arisen since the constitution of the Commission. The question of replacement of a member appointed initially is beyond its scope. The insertion of sub-section (3) became necessary to declares that 'the continued existence of' the Commission is unnecessary'.

2.3. The scheme of the enactment is that the appropriate Government should have no control over the Commission after its constitution under Section 3 of the Act except for the purpose of filling any vacancy which may have arisen in the office of a member of the Commission apart from winding up the Commission by issuance of a notification under section 7 of the Act if the continued existence of the Commission is considered unnecessary. The vacancy in the office of a member of the Commission may arise for several reasons, including resignation by the member, when the Government power to fill the vacancy under Section 3(3) of the Act can be exercised. [300-A-E & G]

2.4. The context as well as the scheme of the Commissions of Inquiry Act 1952 clearly indicate that Section 21 of the General clauses Act 1897 cannot be invoked to enlarge the Government's. power to reconstitute the Commission constituted under Section 3 of the Act in a manner other that that expressly provided in the Commissions of Inquiry Act. There being no express power given by the Commissions of inquiry Act to the appropriate Government to reconstitute the Commission of Inquiry constituted under Section 3 of the Act by replacement or substitution of its sole member and the existence of any such power being negatived by clear implication, no such power can be

exercised by the appropriate Government. [302-C-F]
2.5. Section 21 of the General Clauses Act can be invoked only if, and to the extent. if any the context and the scheme of the Commissions of Inquiry Act so permits. The general power in Section 21 of the General Clauses Act is 'to add, to amend vary or rescind any notifications' etc. In the context of reconstitution of the Commission the power to fill any vacancy in the office of a manner of the Commission is expressly provided in sub-section (3) of Section 3 of the Commissions of Inquiry Act Similarly the power to discontinue the existence of the Commission when it becomes unnecessary can be exercised by issue of a notification in accordance with Section 7 of the Act which results in rescinding the notification issued under Section 3 constituting the Commission. Thus the power to rescind any notification conferred generally in Section 21 of the General Clauses Act is Clearly inapplicable in the scheme of the Commissions of inquiry Act which expressly provides for the exercise of his power in relation to Commission constituted under Section 3 of the Act. The only other material general powers in Section 21 of the General Clauses Act are the power to 'amend' or vary any notification. The extent to which the constitution of the Commission can be amended or varied by filling any vacancy in the office of a member as provided in the Commissions of Inquiry Act is also obviously excluded from the purview of Section 21 of the General Clauses Act which cannot be invoked for this purpose. In a case like the instant one where the scheme of the Commissions of Inquiry Act does provide for amendment and variation of the notification issued under Section 3 for the purpose of reconstitution of the Commission in the manner indicated even that power to amend or vary any notification by virtue of Section 21 of the General Clauses Act must be taken as excluded by clear implication in the sphere of reconstitution of the Commission. Moreover, the power to amend or vary cannot include the power to replace or substitute the existing Composition of the Commission with an entirely new composition. The aid of Section 21 of the General Clauses Act for enlargement of time does not conflict with the context or scheme of the Commissions of Inquiry Act.[301-A-E]
2.6. The rule of Construction embodied in Section 21 of the General Clauses Act cannot apply to the provisions of the Commissions of Inquiry Act 1952 relating to reconstitution of a Commission constituted there under since the Subject-matter. context and effect of such provisions are inconsistent with such application. Moreover. this construction best harmonises with the subject of the enactment and the object of the legislation. Restoring public Confidence by constituting a Commission of Inquiry to investigate into a 'definite matter of public importance' is the purpose of such an exercise. It is therefore, the prime need that the Commission functions as an independent agency free from any govern-mental control after its constitution. It follows that after appointment the tenure of members of the commission should not be dependent on the will of the Government to secure their independence. A body not so independent is not likely to enjoy the requisite public confidence and may not attract men of quality and self-respect. In such a situation the object of the enactment would be frustrated. [302-H. 303-A-C]
Minerva Mills Ltd. v, There Workers, [1954] S.C.R. 465 distinguished.
The State of Bihar v. D. N. Ganguly.,[1959] S.C.R. 1191, relied on.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4734-35 of 1992.

From the Judgment and Order dated 8.5.1992 of the Madhya Pradesh High Court in Misc. Petition Nos. 48] and 533 of 1992.

Shanti Bhushan, N.C. Jain, S.K. Agnihotri and Ashok K. Singh for the Appellant.

Kapil Sibal, N.S. Kale, A.P. Dhamija, S.K. Jain, Manmohan, S. Atreya, Pradeep Agarwal, Basant Bhai Mehta, Ravindra Srivastava, R.N. Srivastava, B.V. Desai and S.V. Deshpande for the Respondents.

The Judgment of the Court was delivered by

VERMA, J. The petitioner State of Madhya Pradesh in both these petitions seeks leave to appeal under Article 136 of the Constitution against the common judgment and order dated 8.5.1992 of the High Court of Madhya Pradesh in Miscellaneous Petition Nos. 481 of 1992 and 533 of 1992 under Article 226 of the Constitution. The High Court has allowed both these writ petitions.

The material facts are these. In Miscellaneous Petition No. 3909 of 1987 tiled in public interest by Kailash Joshi, then Leader of the Opposition in Madhya Pradesh Vidhan Sabha and now a Cabinet Minister in Madhya Pradesh, relating to the affairs of the Churhat Children's Welfare Society and the lottery conducted by it, the M.P. High Court by its judgment dated 20.1.1989 issued a direction for setting up an independent high power agency to bold an inquiry into the affairs of the said Society of which respondent 1 Ajay Singh was one of the office bearers. In compliance of that direction, the State Government passed a resolution on 24.2.1989 and also issued notification of the same date having the effect of setting up a Commission of Inquiry consisting of Justice S.T. Ramalingam, a Judge of the Madras High Court to investigate into the affairs of the said Society and the lottery conducted by it. The resolution and notification are as under :-

> "Bhopal, the 24th February, 1989
> No. F. 1-3-89-l(i)-E.C. - Whereas the High Court of Madhya Pradesh in its order dated the 20th January 1989 in M.P. No. 3909/87 Kailash Joshi versus State of Madhya Pradesh and others has directed that an inquiry be made by an independent high power agency into the affairs of the Churhat Children's Welfare Society and how the share of its profits derived from all or any other draws have been utilized and to take such action as may be required under the law against the said Society and its organizing agent and that the State Government is of the view that the said order of the High Court should be implemented and carried out and whereas the State Government is also satisfied that this is a definite matter of public importance which calls for an inquiry to be made, the State

Government hereby appoints an independent high power agency presided over by Shri Justice S.T. Ramalingam, Judge of the Madras High Court.

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

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

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

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

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

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

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

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

R.C. Shrivastava, Secy"

"Bhopal, the 24th February, 1989

No. F.1-3-89-I(i) -E.C. - Whereas by Government of Madhya Pradesh Resolution dated the 24th February 1989 and Notification No. F.1-3-89-I(i) -E.C., dated the 24thFebruary 1989 an independent High Power Agency presided over by Shri S.T. Ramalingam, Judge of the Madras High Court has been set up to hold an inquiry into the affairs of the Churhat Children's Welfare Society;

And whereas the State Government having regard to the nature of the inquiry to be made and other circumstances of the case is of the opinion that provisions contained in sub-sections (2) to (5) of Section 5 of the Commissions of Inquiry Act, 1952, should be made applicable to the aforesaid Agency;

Now,therefore, in exercise of the powers conferred by sub-section (1) of Section 5 of the Commissions of

Inquiry Act, 1952, the State Government hereby directs that the provisions of sub-sections (2) to (5) of Section 5 of the said Act shall apply to the above described Agency.

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

R.C. Shrivastava, Secy".

According to the terms of the above notification, the inquiry was to be completed within a period of six months from the date of issue of the notification. As the inquiry could not be completed within that period, by a notification dated 1.8.1990 the period for completing the inquiry was extended upto 22.8.1991; then by another notification dated 16.8.1991 the period was extended upto 31.3.1992; and then by another notification dated 27.3.1992 the period for completing the inquiry stands extended upto 31.3.1993.

In the meantime, Justice S.T. Ramalingam became due to retire as a Judge of the Madras High Court on 30.6.1991 on attaining the age of superannuation and, therefore, he wrote a letter dated 19.3.1991 to the Chief Secretary of the State drawing attention to this fact and requesting that necessary modalities be worked out well in time for his continuance as Commission of Inquiry in the light of the guidelines issued by the Government of India for the benefits and emoluments payable to a Judge on his retirement in such a situation. Just Ramalingam mentioned in that letter some of the facilities he expected, to which he would not be entitled from the Government of Tamil Nadu on his retirement. The Chief Secretary R.P. Kapoor sent a reply to Justice Ramalingam by DO No. 504/CS/91 dated 9.4.1991 as under:-

"My dear Hon'ble Justice Ramalingam,

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

With very kind regards,

Yours sincerely,

Sd/-

(R.P. Kapoor)"

'This letter of the Chief Secretary apart from promising to give an early reply also requested Justice Ramalingam to continue with the inquiry so that the same could be completed early. While the promised reply from the State Government Justice Ramalingam was awaited, the State Government, without further reference to Justice Ramalingam, issued a notification dated 10.7.1991 as under:-

"Bhopal, the 10th July, 1991

No. F.1-6-91-I-(8-Ka). - Whereas, an independent high power agency comprising of a single member namely Justice S.T. Ramalingam,

Judge of the Madras High Court was appointed under this Department Notification No. F.1-3-89-I(i) E.C., dated the 24th February 1989;
And whereas Justice S.T. Ramalingam has retired as Judge of the Madras High Court, on 30th of June 1991;
And whereas for continuing in the said agency after retirement Justice Shri S.T. Ramalingam has placed certain terms and conditions which have not been found possible for the Government to accept.
Now, therefore, in exercise of the powers conferred by sub-section (3) of Section 3 of the Commissions of Inquiry Act, 1952 (No. LX of 1952), the State Government hereby appoint Justice Shri G.G. Sohani, retired Chief Justice, High Court of Patna (Bihar) as single member of the said agency in place of Justice Shri S.T. Ramalingam.
Accordingly this Department Notification Nos. (I)F.1-3- 89-I(i) - E.C. dated the 24th February 1989, (2) F.1-3 89-1(i) - E.C., dated the 24th February 1989 and (3) F.1-3-89-I(i) - E.C. dated the 24th February 1989, shall stand amended to this extent.
By order and in the name of the Governor of Madhya Pradesh
S.K. Misra, Secy.

Accordingly, by this notification, the State Government replaced Justice S.T. Ramalingam with Justice G.G. Sohani, retired Chief Justice of Patna High Court as the sole member of the Commission of Inquiry. The appointment of Justice G.G. Sohani in place of Justice S.T. Ramalingam was challenged in the M.P. High Court by a writ petition - M.P. No. 2359 of 1991- by respondent No. 1 Ajay Singh. By an interim order dated 30.7.1991 passed by the High Court, the operation of the above notification dated 10.7.1991 was stayed. During the pendency of that writ petition, Justice G.G. Sohani conveyed to the State Government his disinclination to continue with the assignment and tendered his resignation. Consequently, the High Court dismissed that writ petition as infructuous on 5.9.1991. It was only thereafter that the Chief Secretary of the State Government sent a letter dated 12.9.1991 in continuation of his earlier letter dated 9.4.1991 to Justice Ramalingam which is as under :

"This is in continuation to my earlier letter No. 504/CS/91 dated 9th April, 1991 regarding the arrangement for the Commission of Enquiry (Churhat Children Welfare Society and Lottery), consequent to your superannuation as a Judge of the Madras High Court.
2. The State Government have considered your communications about the inconveniences you were facing in coming to Jabalpur for want of Air-link between Madras and

Jabalpur. The State Government have also considered the terms and conditions mentioned in your letter of 19th March, 1991. On careful consideration of all aspects mentioned in your communications it has not been possible for the State Government to accept the terms and conditions set out in your letter of 19th March for taking up the work of the above mentioned Enquiry Commission after your superannuation. The State Government had accordingly appointed Justice Mr. G.G. Sohani, retired Chief Justice of the Patna High Court to be the single Member of the Commission. I am, however, happy to convey the deep appreciation of the State Government for the services rendered by you in the Commission in spite of all the personal inconvenience it has caused. The Hon'ble Chief Minister had made a general mention of it in the Vidhan Sabha on the 4th July, 1991.

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

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

Yours sincerely,
R.P. Kapoor"

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

"Bhopal, the 9th January 1992

No. F.1-6-91-I (8 Ka). - Whereas in exercise of the powers conferred by sub-section (3) of Section 3 of the Commissions of Enquiry Act, 1952 (No. LX of 1952) Justice Shri G.G. Sohani, retired Chief Justice, High Court of Patna (Bihar) was appointed as single member of an independent high power agency constituted under this department notification No. F.1-3-89-I(i)-E.C., dated 24th February 1998 in place of Justice Shri S.T. Ramalingam vide this department Notification No. F.1-6-91-I(8 Ka), dated the 10th July 1991;

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

Now, therefore, in exercise of the powers conferred by sub-section (3) of Section 3 of the Commissions of Enquiry Act, 1952 (No.LX of 1952),

read with Section 21 of the General Clause Act, 1987 (No. 10 of 1897), the State Government hereby appoint Justice Shri Kamlakar Choubey, retired Judge of the Allahabad High Court as a single member of the said agency in place of Shri G.G. Sohani.

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

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

In this manner, the State Government after replacing Justice S.T. Ramalingam first by Justice G.G. Sohani, thereafter replaced him by Justice Kamlakar Choubey, a retired Judge of the Allahabad High Court, as the sole member of the Commission. It is unnecessary to refer to the terms and conditions of appointment of Justice Kamlakar Choubey which were detailed in the General Administration Department Memo. dated 23.3.1991 and are referred in the High Court judgment, which include the facility of a Camp Office for him at Varanasi and other facilities of vehicle, telephone and staff etc.

The appointment of Justice Kamlakar Choubey as the sole member constituting the Commission of Inquiry in this manner resulting in the replacement of Justice S.T. Ramalingam initially appointed for the purpose and to writ petitions - M.P. Nos. 481 of 1992 and 533 of 1992 - for quashing the notification dated 9.1.1992 appointing Justice Kamlakar Choubey. Challenge to the notification dated 10.7.1991 issued earlier appointing, Justice G.G. Sohani is academic in view of Justice Sohani having resigned as indicated earlier. The remaining significance of the validity of the notification dated 10.7.1991 appointing Justice G.G. Sohani relates only to the State Government's power to appoint another person in place of Justice S.T. Ramalingam in the above circumstances.

The challenge of the writ petitioners before the High Court was that during the continuance as the single member of the Commission of Inquiry of Justice S.T. Ramalingam, there was no power in the State Government to replace him as the member of the Commission and, therefore, the appointment first of Justice G.G. Sohani and on his refusal, of Justice Kamlakar Choubey, being without any authority, was invalid. On this basis, the relief of quashing the notification dated 9.1.1992 appointing Justice Kamlakar Choubey was sought. In substance, the argument was that there being no vacancy in the office, the power under Section 3(3) of the Commissions of Inquiry Act, 1952, which is available only to fill any vacancy could not be invoked and there was no other source of power available to the State Government for this purpose. The argument of the learned Advocate General on behalf of the State Government was that a vacancy had arisen in the membership of the Commission on account of Justice Ramalinga's retirement from Madras High Court on 30.6.91, and there being his implied resignation indicated by his inclination to continue on the terms and conditions suggested by him, which the State (Government did not consider feasible, the power of the State Government under

Section 3(3) of the Commissions of Inquiry Act to fill the implied vacancy was available. It was also urged by the learned Advocate General that vacancy in the office of the single member of the Commission was also implied from the fact that the appointment of Justice S.T. Ramalingam as the Commission of Inquiry was also his status as a sitting Judge of the Madras High Court and, therefore, his retirement as a Judge resulted in creation of the vacancy. The learned Advocate General also placed reliance on Section 16 of the General Clauses Act, 1897, in aid of the State Government's power under Section 3(3) of the Commissions of Inquiry Act. Another submission of the learned Advocate General was that the State Government was the sole judge in this matter and was, therefore, competent to choose the person for making or continuing the inquiry in view of the power available under Section 3 of the Commissions of Inquiry Act lead with Section 16 of the General Clauses Act. The learned counsel appearing on behalf of Kailash Joshi placed reliance on Section 3(2) of the Commission of Inquiry Act read with Section 14 of the General Clauses Act to support the State Government's action appointing Justice Kamlakar Choubey contending that the State Government had power to reconstitute the Commission replacing Justice S.T. Ramalingam by another person. An argument challenging the locus standi of the writ petitioner was also faintly urged by counsel for Kailash Joshi.

The High Court allowed the writ petitions and quashed the notification dated 9.1.1992 appointing Justice Kamlakar Choubey. It held that there was no vacancy in the office of the single member of the Commission to empower the State Government to fill the vacancy under Section 3(3) of the Commissions of Inquiry Act. On a construction of the provisions of the Commissions of Inquiry Act and those of the General Clauses Act relied on in support of the rival contentions, the High Court came to the conclusion that there was neither any valid reason or ground nor any power available in the State Government to replace Justice S.T. Ramalingam by another person as was purported to be done by First appointing Justice G.G. Sohani and then Justice Kamlakar Choubey, both of whom were also retired Judges. The objection to locus standi for the writ petitioners was also rejected. The relevant part of the directions made by the High Court is as under:-

> 42. As a result of the aforesaid discussion, the petition succeeds and is hereby allowed. The notification dated 10.7.1991 (Annexure-H) and the consequent notification based thereon dated 9.1.1992 (Annexure-M) are hereby quashed. It is open to the State Government to propose to Hon'ble Shri Justice S.T. Ramalingam the terms and conditions or his continuance as a member of the Commission equivalent to, loss or more favourable than those offered and fixed for Hon'ble Shri Justice Kamlakar Choubey. Thereafter depending on his reply the State Government may continue or discontinue his appointment or substitute another member in his place. It is also made clear that it would be open to Justice

Ramalingam to accept the terms and conditions offered by the State Government of Madhya Pradesh or to resign from the office, by taking a decision in that behalf early, so that the work of the Commission is not unduly hampered and it is completed well within the extended period i.e. before 31st March, 1993 ..... "

Hence, these petitions for grant of special leave.

Leave granted.

Shri Shanti Bhushan, learned senior counsel for the State of Madhya Pradesh, expressly gave up the argument advanced before the High Court of the implied resignation of Justice S.T. Ramalingam giving rise to a vacancy or any implied vacancy on retirement of Justice Ramalingam as a Judge of the Madras High Court to enable exercise of power under Section 3(3) of the Commissions of Inquiry Act for first appointing Justice G.G. Sohani and then Justice Kamlakar Choubey in place of Justice S.T. Ramalingam The case of the State of Madhya Pradesh in this Court was confined by Shri Shanti Bhushan to only one point. The only contention of Shri Shanti Bhushan is that the aid of Section 21 of the General Clauses Act is available to the State Government for exercising its powers under the Commissions of Inquiry Act 'to add to, amend or vary' the notification issued initially appointing Justice S.T. Ramalingam as the sole member of the Commission which enables the State Government to reconstitute the Commission by replacing Justice S.T. Ramalingam with any other person in the circumstances of the case. He argued that it is in exercise of this power that the period fixed initially for completion of the inquiry could be amended since, to the extent the provisions in the Commissions of Inquiry Act are silent, recourse can be had to Section 21 of the General Clauses Act for making a suitable addition, amendment or variation of the initial notification. According to learned counsel, the power to rescind any notification being provided in Section 7 of the Commissions of Inquiry Act, such a power in Section 21 of the General Clauses Act was not available, but not so the power given by Section 21 of the General Clauses Act to add to, amend or vary any notification. Shri Shanti Bhushan also referred to Section 8-A of the Commissions of Inquiry Act as an indication to support his submission of the Government's power to reconstitute the Commission even during the availability of the person so appointed even though, he stated, Section 8-A is not the source of power for reconstitution of the Commission.

In reply, Shri Kapil Sibal, learned senior counsel for respondent No.1, submitted that the scheme of the Commissions of Inquiry Act does not permit invoking Section 21 of the General Clauses Act except for enlarge ment of the period for completion of the inquiry by amendment of the notification only to that extent since the only situations in which reconstitution of the Commission can be made are provided in the Commissions of Inquiry Act itself and, therefore, the context rules out the applicability of Section 21 of the General Clauses Act for any such purpose. Shri Sibal also submitted that the construction suggested by Shri Shanti Bhushan is alien to the scheme of the Commissions of Inquiry Act. Shri Sibal added that Section 8-A of the Commissions of Inquiry Act was enacted for an entirely different purpose, to ensure continuity of the Commission's work and has nothing to do with its

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

In the ultimate analysis, the controversy surviving before us on the rival contentions is considerably narrowed. In substance, the only surviving controversy now is whether in the scheme of the Commissions of Inquiry Act, the power 'to add to, amend or vary' any notification given by Section 21 of the General Clauses Act is available to reconstitute a Commission of Inquiry constituted under Section 3 of the Commissions of Inquiry Act by replacing the sole member appointed initially with another person during the availability of the sole member initially appointed. The validity of the aforesaid impugned notifications dated 10.7.1991 appointing Justice G.G. Sohani and dated 9.1.1992 appointing Justice Kamlakar Choubey to replace Justice S.T. Ramalingam depends on the answer to this question which alone now survives for decision.

A reference to the object and purpose of an enactment in the nature of the Commissions of Inquiry Act, 1952 would be worthwhile before proceeding to examine its scheme and the provisions therein. The object of the enactment, to the extent it is relevant, while construing the meaning of its provisions may be of assistance.

The Commissions of Inquiry Act, 1955 is similar to and is modelled on the corresponding English statute and provides this historical back ground for the Indian statute. The purpose of such an enactment is aptly summarised in the speech of Lord Salmon on 'Tribunals of Inquiry' as under :-

> "In all countries, certainly in those which enjoy freedom of speech and a free Press, moments occur when allegations and rumours circulate causing a nation-wide crisis of confidence in the integrity of public life or about other matters of vital public importance. No doubt this rarely happens, but when it does it is essential that public confidence should be restored, for without it no democracy can long survive. This confidence can be effectively restored only by thoroughly investigating and probing the rumours and allegations so as to search out and establish the truth. The truth may show that the evil exists, thus enabling it to he rooted out, or that there is no foundation is the rumours and allegations by which the public has been disturbed. In either case, confidence is restored. How, in such circumstances, can the truth best be established ?"

It is for the purpose of ascertaining the truth in such circumstances that the Commissions of Inquiry Act, 1952 has been enacted. While construing the provisions of the enactment, it would be useful to bear in mind its object if occasion arises for illumination of any grey areas with reference to the object of the enactment as a permissible aid to construction. The Commissions of Inquiry Act, 1952

was enacted to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers. Section 2 of the Act contains definitions. Section 3 provides for appointment of a Commission of Inquiry. Sub-section (1) of Section 3 lays down that a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance may be appointed by the appropriate Government it is of opinion that it is necessary so to do and shall make such an appointment if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette. Sub-section (2) of Section 3 says that the Commission may consist of one or more members appointed by the appropriate Government, and where the number is more than one, one of them may be appointed as the Chairman. Sub-section (3) of Section 3 enables the appropriate Government to fill any vacancy which may arise in the office of a member of the Commission whether consisting of one or more than one member, at any stage of an inquiry. Sub-section (4) of Section 3 requires the appropriate Government to cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report, if any, of the Commission of Inquiry together with a memorandum of the action taken thereon, within a period of six months from the submission of the report by the Commission to the appropriate Government. Section 4 prescribes that the Commission shall have the powers or a civil court while trying a suit under the Code of Civil Procedure in respect of the matters mentioned therein. Section 5 deals with the additional powers of the Commission. Section 5-A relates to the power of the Commission for conducting investigation pertaining to inquiry. Section 5-B deals with the power of the Commission to appoint assessors. Section 6 provides for the manner of use of the statements made by persons to the Commission. Section 6-A provides that some persons are not obliged to disclose certain facts. Section 7 deals with the manner in which a Commission of Inquiry appointed Section 3 ceases to exist in case its continuance is unnecessary. It provides for a notification in the Official Gazette by the appropriate Government specifying the date from which the Commission shall cease to exist if it is of the opinion that the continued existence of the Commission is unnecessary. Where a Commission is appointed in pursuance of a resolution passed by the Parliament or as the case may be, the Legislature of the State, then a resolution for the discontinuance of the Commission is also to be passed by it. Section 8-A provides that the inquiry is not to be interrupted by reason of vacancy or change in the constitution of the Commission and it shall not be necessary for the Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place. Section 8-B prescribes that persons likely to be prejudicially affected by the inquiry must be heard. Section 8-C deals with the right of cross-examination and representation by legal practitioner of the appropriate Government, every person referred to in Section 8-B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission. Sections 9, 10 and 10-A relate to ancillary matters while Section 12 contains the rule making power of the appropriate Government. Section 11 provides that the Act is to apply to other inquirying authorities in certain cases and where the Government directs that the said provisions of this Act shall apply to that authority and issues such a

notification, that authority shall be deemed to be a Commission appointed under Section 3 for the purposes of this Act. Admittedly, it is by virtue of Section 11 that the Commission of Inquiry appointed in the present case is deemed to be a Commission appointed under Section 3 for the purposes of this Act because the Commission was constituted by a resolution of the Government pursuant to the direction of the M.P. High Court in the writ petition filed in public interest by Kailash Joshi as indicated earlier. For the purposes of this case, the material provisions of the enactment are Sections 3, 7 and 8-A apart from Section 21 of the General Clauses Act, 1897 with reference to which the rival contentions were made.

These provisions are as under :-

The Commissions of Inquiry Act, 1952

"3. Appointment of Commission.- (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may he specified in the notifications and the commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter-

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member one of them may be appointed as the Chairman thereof.

(3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which

may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4) The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.'

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

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

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

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

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

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

> Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place."
>
> The General Clauses Act, 1897
>
> "21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws. Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to and to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued."

It may be mentioned that sub-sections (3) and (4) of Section 3 and Section 8-A were inserted while Section 7 was substituted in the Commissions of Inquiry Act, 1952 by the Commissions of Inquiry (Amendment) Act, 1971 (No.79 of 1971) as a result of the recommendations of the Law Commission of India made in paras 26 and 34 of its 24th Report. In para 26, the recommendation made was to amend Section 3 of the Act 'to provide expressly for the filling up of vacancy or for an increase in the number of members whenever the Government thinks it necessary or expedient to do so'. In para 34 of the Report, the recommendation was to insert a new section 8-A in the light of the proposed amendment in Section 3 to clarify that 'it is not necessary for the Commission to recommence its inquiry if a change takes place in the constitution of the Commission during the pendency of an inquiry'. The legislative history of sub-section (3) of Section 3 and Section 8-A inserted simultaneously by amendment of the Act shows their interrelation and the object of enacting Section 8-A is to clarity that the inquiry is not required to recommence or be interrupted by reason of the filling of any vacancy or decrease in the number of members of the Commission. Section 8-A along with Sections 8-B and 8-C inserted simultaneously by amendment in the principal Act relate to the procedure of the Commission and were inserted to provide for specific situations while Section 8 contains the general power of the Commission to regulate its own procedure.

The real question for decision in the present case is: Whether the appropriate Government after constituting the Commission under Section 3 of the Act is empowered to reconstitute the Commission substituting another person as the sole member in place of the initial appointee? In substance, it is this power that the State Government claims to have exercised in the present case and is attempted to be justified by the argument advanced by Shri Shanti Bhushan to support the appointment first of Justice G.G. Sohani and then of Justice Kamlakar Choubey in place of Justice S.T. Ramalingam. To recapitulate, the argument of Shri Shanti Bhushan is that the power of reconstituting the Commission in this manner is available to the State Government under Section 21 of the General Clauses Act which can be invoked in aid of the power of the Government under Section 3 of the Commissions of Inquiry Act. Section 8-A of the Commissions of Inquiry Act is referred to by Shri Shanti Bhushan as an indication of the existence of this power in the State Government even though he does not rely on it as a source of

this power. Shri Kapil Sibal, on the other hand, contends that the scheme of the enactment shows that the appropriate Government cannot interfere with the working of the Commission after its constitution except in the manner expressly provided in the Act and Section 7 is a clear indication that interference with the functioning of the Commission is not permissible in any other manner. Shri Sibal contends that Section 21 of the General Clauses Act is not available to support the Government's action in the present case.

Shri Shanti Bhushan concedes that there is no express provision in the Commissions of Inquiry Act, 1952 empowering the Government to replace or substitute the sole member of a Commission with another person during the continuance of the Commission, but he submits that this is implicit in the power to appoint a Commission and designate its personnel under sub-sections (1) and (2) of Section 3 of the Commissions of Inquiry Act read with the power to amend or vary any notification available under Section 21 of the General Clauses Act. Shri Shanti Bhushan also conceded that the aid of Section 21 of the General Clauses Act is available only if the context and the scheme of the Commissions of Inquiry Act so permits. He submitted that the Government's power to extend the time specified in the initial notification for completing the work of the Commission is not to be found in any express provision in the Commissions of Inquiry Act, but is exercised by amendment of the initial notification only under Section 21 of the General Clauses Act. According to Shri Shanti Bhushan, the appointment of a Commission is under sub-section (1) and it is under sub-section (2) of Section 3 that the person constituting the Commission is appointed even though it may be a simultaneous process. The replacement of the member initially appointed to constitute the Commission, according to learned counsel, is by re-exercise of the power under sub-section (2) of Section 3. The submission is that the Commission appointed under sub-section (1) of Section 3 continues while it may be reconstituted by replacement of the member which is done under sub-section (2).

In our opinion, the power of the Government to appoint a Commission of Inquiry and name the person or persons constituting it is in sub-section (1) of Section 3 and is not an exercise divided between subsections (1) and (2) of Section 3 as suggested by Shri Shanti Bhushan. Sub-section (2) merely confers the power in the Government to appoint a Commission consisting of one or more members and provides that if there be more than one member of the Commission, then one of them may be appointed Chairman of the Commission. lt is not as if sub-section (1) deals with mere appointment of a Commission of Inquiry without clothing it with its personnel and the power to appoint the member/members thereof is to be found only in sub-section (2). That apart, there is nothing in any of these provisions to suggest that the Government has the power to reconstitute the Commission after its appointment by replacing the existing sole member with another person, Sub-section (3) deals expressly with the Government's power to fill any vacancy which may have arisen since the constitution of the Commission. The question of replacement of a member appointed initially is obviously beyond its scope. Sub-section (3) inserted by amendment in Section 3 of the Commissions of Inquiry Act, 1952 is a clear contra-indication to the construction suggested by Shri Shanti Bhushan of sub-sections (1) and (2) of Section 3 in the

scheme of the Act. If the construction suggested by Shri Shanti Bhushan be correct, there was no need to make this amendment and insert sub-section (3) which is a clear indication of the limit and extent to which the power of reconstitution of the Commission can be exercised by the Government after the Commission has been constituted. As the Law Commission's Report itself indicates, this amendment became necessary to provide expressly in the statute for the Government's power to till any vacancy after the initial constitution Whatever may have been the position prior to insertion of sub-section (3) in Section 3, there can be no doubt that after its insertion, the scheme of the enactment excludes the power of reconstitution of the Commission in a manner not expressly provided therein. In view of sub-section (3), it is not permissible to construe sub-sections (1) and (2) of Section 3 in any other manner. If the scheme of the enactment gave such wide power to reconstitute a Commission after its initial constitution and permitted replacement or substitution of the existing member of a Commission with another person sans sub-section (3) of Section 3, the power to fill any vacancy was not required to be provided separately ahat the Commission functions as an independent a gency
free from any govern-mental control after its constitution. It follows that after appointment the tenure of members of the commission should not be dependent on the will of the Government to secure their independence. A body not so independent is not likely to enjoy the requisite public confidence and may not attract men of quality and self-respect. In such a situation the object of the enactment would be frustrated. [302-H. 303-A-C]
Minerva Mills Ltd. v, There Workers, [1954] S.C.R. 465 distinguished.
The State of Bihar v. D. N. Ganguly.,[1959] S.C.R. 1191, relied on.
in Rangachari and Soshit Karamchari respectively reiterated in State of Punjab v. Hira Lal, [1971] 3 SCR 267, and Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan & Anr., [1986] 2 SCR 17. In Rangachari it was held, 'The condition precedent may refer either to numerical inadequacy of representation in the services or even to the qualitative inadequacy of representation'.3 In the context the expression, 'adequately represented imports consideration of size as well as values, numbers as well as the nature of appointments'.4

But, inadequacy of representation is creative of jurisdiction only. It is not measure of backwardness. That is why less rigorous test or lesser marks and competition amongst the class of unequals at the point of entry has been approved both this Court and American courts. But a student admitted to a medical or engineering college is further not granted relaxation in passing the examinations. In fact this has been explained as valid basis in American decisions furnishing justification for racial admissions on lower percentage. Rationale appears to be that every-one irrespective of the source of entry being subjected to same test neither efficiency is effected nor the equality is disturbed. After entry in service the class is one that of employees. If the social scar of backwardness is carried even, thereafter the entire object of equalisation stands frustrated. No further classification amongst employees would be justified as is not done amongst students.

Constitutional, legal or moral basis for protective discrimination is redressing identifiable backward class for historical injustice. That is they are today, what they

would not have been but for the victimisation. Remedytuting the Comm ission. The enactment, therefore, also provides in Section 7 the only situation in which the Government can rescind the notification issued under Section 3 constituting the Commission. To the extent to which express provision is made in the enactment, it is common ground, Section 21 of the General Clauses Act, 1897 cannot be invoked. These aspects have to be borne in mind while considering the tenability of the submission made by Shri Shanti Bhushan with the aid of Section 21 of the General Clauses Act.

It is common ground before us that Section 21 of the General Clauses Act can be invoked only if, and to the extent, if any, the context and the scheme of the Commissions of Inquiry Act so permits. The general power in Section 21 of the General Clauses Act is to add to, amend, vary or rescind any notification etc. In the context of reconstitution of the Commission, the power to fill any vacancy in the office of a member of the Commission is expressly provided in sub-section (3) of Section 3 of the Commission of Inquiry Act. Similarly, the power to discontinue the existence of the Commission when it becomes unnecessary can be exercised by issue of a notification in accordance with Section 7 of the Act which results in rescinding the notification issued under Section 3 constituting the Commission. Thus, the power to rescind any notification conferred generally in Section 21 of the General Clauses Act is clearly inapplicable in the scheme to the Commissions of Inquiry Act which expressly provides for the exercise of this power in relation to a Commission constituted under Section of the Act. The only material remaining general powers in Section 21 of the General Clauses Act are the power to 'amend ' or 'vary' any notification. The extent to which the constitution of the Commission can be amended or varied by filling any vacancy in the office of a member as provided in the Commissions of Inquiry Act is also obviously excluded from the purview of Section 21 of the General Clauses Act which cannot be invoked for this purpose.

The surviving question, therefore, is: Whether there is power to reconstitute the Commission by replacement or substitution of the existing member, though not provided in the Commissions of Inquiry Act by invoking the residuary power to amend or vary any notification under Section 21 of the General Clauses Act? In the first place, in a case like the present where the scheme of the Commissions of Inquiry Act does provide for amendment and variation of the notification issued under Section 3 for the purpose of reconstitution of the Commission in the manner indicated, even that power to amend or vary any notification by virtue of Section 21 of the General Clauses Act must be taken as excluded by clear implication in the sphere of reconstitution of the Commission. Moreover, the power to amend or vary cannot include the power to replace or substitute the existing composition of the Commission with an entirely new composition. Shri Shanti Bhushan submitted that the time specified in the initial notification for completing the task of the Commission is enlarged by subsequent notification and this is done in exercise of the general power available under the General Clauses Act to extend time. This submission does not support the argumentof learned counsel that the general power under Section 21 of the General Clauses Act is also available to reconstitute the Commission by replacement or substitution of its sole

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

The context as well as the scheme of the Commissions of Inquiry Act, 1952 clearly indicate that Section 21 of the General Clauses Act, 1897 cannot be invoked to enlarge the Government's power to reconstitute the Commission constituted under Section 3 of the Act in a manner other than that expressly provided in the Commissions of Inquiry Act. There being no express power given by the Commissions of Inquiry Act to the appropriate Government to reconstitute the Commission of Inquiry constituted under Section 3 of the Act by replacement or substitution of its sole member and the existence of any such power being negatived by clear implication, no such power can be exercised by the appropriate Government. The scheme of the enactment is that the appropriate Government should have no control over the Commission after its constitution under Section 3 of the Act except for the purpose of filling any vacancy which may have arisen in the office of a member of the Commission apart from winding up the Commission by issuance of a notification under Section 7 of the Act if the continued existence of the Commission is considered unnecessary. The vacancy in the office of a member of the Commission may arise for several reasons, including resignation by the member, when the Government's power to fill the vacancy under Section 3(3) of the Act can be exercised. Even though a case of implied resignation creating an implied vacancy was set up by the State of Madhya Pradesh before the High Court, that stand was rightly abandoned before us by Shri Shanti Bhushan.

We have no doubt that the rule of construction embodied in Section 21 of the General Clauses Act cannot apply to the provisions of the Commissions of Inquiry Act 1952 relating to reconstitution of a Commission constituted thereunder since the subject-matter, context and effect of such provisions are inconsistent with such application. Moreover, the construction made by us best harmonises with the subject of the enactment and the object of the legislation. Restoring public confidence by constituting a Commission of Inquiry to investigate into a 'definite matter of public importance' is the purpose of such an exercise. It is, therefore, the prime need that the Commission functions as an independent agency free from any governmental control after its constitution. It follows that after appointment, the tenure of members of the commission should not be dependent on the will of the Government, to secure their independence. A body not so independent is not likely to enjoy the requisite public confidence any may not attract men of quality and self-respect. In such a situation, the object of the enactment would be frustrated. This aspect suggests that the construction made by us, apart from harmonising the provisions of the statute, also promotes the object of the enactment while the construction suggested by the appellant frustrates both.

Shri Shanti Bhushan placed reliance on the decision in Minerva Mills Ltd. v. Their Workers, 1-19541 S.C.R. 465. In that decision, the power of the appropriate Government under Section 7 of the Industrial Disputes Act, 1947 to constitute an industrial tribunal for a fixed period of time and to constitute a new tribunal on the expiry of that period to hear and dispose of references made to the previous tribunal which had not been disposed of by that tribunal was upheld. Shri Shanti Bhushan contended that the observations made in that decision are not confined to the exercise of that power on the expiry of the tenure of the tribunal first

constituted. It was clearly indicated in that decision that 'when the life of the first tribunal automatically came to end by efflux of time, no question of vacancy in the office really arose and, therefore, it was not a case falling under sub-clause (2) of Section 8 but the situation that arose fell within the ambit of Section 7'. The observations made in that decision have to be read in the context of the facts of that case. That decision is clearly distinguishable.

On the other hand, Shri Kapil Sibal placed reliance on The State of Bihar v. D.N. Ganguly & Others, [1959] S.C.R. 1191. This decision also related to the reference of a dispute under the Industrial Disputes Act, 1947. It was pointed out that 'it was well settled that the rule of construction embodied in Section 21 of the General Clauses Act can apply to the G provisions of a statute only where the subject-matter, context, and effect of such provisions are in no way inconsistent with such application . On this basis it was held that it did not apply to Section 10(1) of the Industrial Disputes Act. On a construction of Section 10(1) of the Industrial Disputes Act, 1947, it was held that it does not confer on the appropriate Government the power to cancel or supersede a reference made thereunder in respect of an industrial dispute pending adjudication by the tribunal constituted for that purpose. Reliance placed on Section 21 of the General Clauses Act on behalf of the Government to invoke such a power by necessary implication was clearly negatived. The decision of this Court in Minerva Mills Ltd. (supra) was distinguished as we have already indicated. In our opinion, the ratio in D.N. Ganguly (supra) supports the view taken by us in the present case that Section 21 of the General Clauses Act cannot be invoked to support the impugned action of the State of Madhya Pradesh as contended by Shri Shanti Bhushan. The construction suggested by Sri Shanti Bhushan is inconsistent with the provisions and the scheme of the Commissions of Inquiry Act, 1952 and must, therefore, be rejected.

Admittedly, the power under Section 3(3) of the Commissions of Inquiry Act, 1952 was not available to the State of Madhya Pradesh in the facts of the present case to appoint any other person replacing Justice S.T. Ramalingam as the sole member of the Commission of Inquiry. The power under sub-sections (1) and (2) of Section 3 read with Section 21 of the General Clauses Act or even Sections 14 or 16 thereof was also not available for this purpose, for the reasons given earlier. Accordingly, the notification dated 10.7.1991 appointing Justice G.G. Sohani and the notification dated 9.1.1992 appointing Justice Kamlakar Choubey were both invalid. It is not unlikely that Justice G.G. Sohani may have resigned forming the same opinion when his appointment was challenged. However, the State of Madhya Pradesh did not choose to reflect and reconsider the legality of its action in spite of the resignation of Justice G.G. Sohani and it continued to move in the wrong direction by making another invalid appointment of Justice Kamlakar Choubey.

Consequently, these appeals are dismissed and the impugned judgment of the High Court quashing the notifications dated 10.7.1991 and 9.1.1992 is sustained for the aforesaid reasons given by us. The State of Madhya Pradesh shall, in view of the retirement of Justice S.T. Ramalingam as a Judge of the Madras High Court in the meanwhile, take necessary action to finalise his terms and conditions in accordance with the guidelines issued by the Government of India in this behalf. Such action be taken promptly to avoid any undue delay in completion of the

Commission's task. No costs.

N.P.V. Appeal dismissed.

JUDIS