REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

CONTEMPT PETITION (CRL.) NO. 11 OF 1990

Dr. Subramanian Swamy …… Petitioner

Vs.

Arun Shourie …… Respondent

WITH

CONTEMPT PETITION (CRL.) NO. 12 OF 1990

JUDGMENT

R.M. LODHA, CJI.

In the issue of Indian Express of August 13, 1990, an editorial was published bearing the caption "If shame had survived". The editorial reads as under:

"If shame had survived"

> The legal opinion that the former Chief Justice of India, Mr. Y. V. Chandrachud, has given on the Kuldip Singh Commission's report is a stunning indictment. Succinct, understated to the point of being deferential, scrupulously adhering to facts and law, eschewing completely the slightest attribution of any motive to the Commission, the opinion is a model of rectitude. Nothing in the report survives it "evidence" that it was agreed would not be pressed relied on as a fulcrum; evidence of the one witness

who was the hub of the decisions wholly disregarded; indictments framed on "probable possibility", theories invented to read meanings into documents and the manifest, straightforward explanation ignored; the Commission itself as well as the energetic prosecutor himself declaring one day that neither had a shred of evidence which cast a doubt on Hegde and the very next day declaring a conclusion; refusing to common witnesses for cross-examination on the pretext that the Commission did not have the power to call them – this in the face of clear judgments to the contrary; then invoking a section of the Indian Evidence Act which applies to a person making a dying declaration; ignoring the fact that the man who is said to have been benefited has lost Rs.55 lakh which he deposited; insinuating – and building an entire indictment on the insinuation – that the builder had fabricated a front, when the actual record shows that he was doing everything openly and with all the formalities which the law required; ignoring the fact that the land was to be given to the builder at three times the cost of acquisition and that on top of it development charges were to be levied from 4 to 6 times the cost of acquisition; ignoring entirely the fact that the land was never transferred and that it was not transferred solely because of the then Chief Minister's insistence that rules be framed under which all such cases would be dealt with. It is the longest possible list of *suppresso veri suggesto falsi.*

If there had been any sense of honour or shame, a Judge would never have done any of this. If there were any residual sense of honour or shame, the Judge having done any of it and having been found doing it, would have vacated his seat. But this is India. Of 1990, the Commissioner Kuldip Singh having perpetrated such perversities will continue to sit in judgment on the fortunes and reputations of countless citizens. He will continue to do so from nothing less than the Supreme Court of India itself.

Such is our condition. And so helpless are we that there is nothing we can do about such a "Judge". Save one thing. The only way to mitigate the injuries that such persons inflict on citizens is for all of us to thoroughly examine the indictments or certificates they hand out. Only that exercise will show up these indictments and certificates for the perversities which they are and only in that way can their effect be diluted. "Who has the time to read voluminous reports, to sift evidence?" But if the issue is important enough for us to form an opinion on it, it is our duty to find

> the time to examine such reports, to examine as well the conduct of the commissioners who perpetrate them."

2. It so happened that Justice Kuldip Singh, the then sitting Judge of the Supreme Court, was appointed as Chairman, Commission of Inquiry under the Commissions of Inquiry Act, 1952 (hereinafter referred to as '1952 Act') to probe into alleged acts of omissions and commissions by Shri Ramakrishna Hegde, the former Chief Minister of Karnataka. The one man Commission headed by Justice Kuldip Singh submitted its report on 22.06.1990.

3. These two contempt matters, one by Dr. Subramanian Swamy[1] and the other[2] *suo motu* arise from the editorial published in Indian Express as quoted above. In the contempt petition filed by Dr. Subramanian Swamy on 23.08.1990 under Section 15 of the Contempt of Courts Act, 1971 (hereinafter referred to as, "1971 Act") against the then Editor of Indian Express, Mr. Arun Shourie, it is contended that the editorial is a scandalous statement in respect of a sitting Judge of the Supreme Court of India and the judiciary. It lowers the authority of this Court as well as shakes public confidence in it and amounts to criminal contempt of this Court. It is submitted that unless this Court acts promptly and if necessary,

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[1] [Contempt Petition (Crl.) No.11 of 1990 Dr. Subramanian Swamy v. Arun Shourie]

[2] [Contempt Petition (Crl.) No.12 of 1990 In the matter of Mr. Arun Shourie]

suo motu in the matter, sitting Judges would be helpless and unable to defend themselves, and in the process, public confidence in judges and the courts would be eroded.

4. It is pertinent to notice here that the then Chief Justice of India obtained opinion of the Attorney General for India in the matter. The then Attorney General Shri Soli Sorabjee in his opinion dated 27.08.1990 noted that the editorial had, *prima facie*, overstepped the limits of permissible criticism and the law of contempt, as was existing in the country, did not provide for truth as defence and, therefore, he opined that an explanation was called for and a notice could be issued for that purpose. In his view, the question whether the contempt of a Commission or Commissioner appointed under the 1952 Act tantamounts to contempt of the High Court or Supreme Court of which the Commissioner is member needs to be authoritatively settled by the Supreme Court in view of the reoccurrence of the issue.

5. On 03.09.1990, the *suo motu* contempt matter and so also the contempt petition filed by Dr. Subramanian Swamy came up for consideration before the three Judge Bench of this Court headed by the Hon'ble the Chief Justice. The proceeding of 03.09.1990 reads as under:

> "In Re : Arun Shourie and Anr.

We have seen the editorial in the "Indian Express" of August 13, 1990. We have obtained the opinion of the Attorney General of India in the matter. We consider that paragraphs 2 and 3 of the editorial tend to fall within the definition of 'criminal contempt' in Section 2(c) of the Contempt of Courts Act, 1971. We, therefore, direct that notice returnable on 8th October, 1990 be issued to the alleged contemners calling upon them to show cause why proceedings for contempt of this Court under Article 129 of the Constitution should not be initiated against them in respect of the offending editorial published by them. The contemners shall be present in the Court in person on 8th October, 1990. A copy of the opinion given by the Attorney General in the matter should accompany the notice to be issued to the contemners. They may file their affidavits in support of their defence on or before 8th October, 1990.

Issue notice to the Attorney General of India to appear and assist the Court in hearing the matter.

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Learned Attorney General of India has also drawn our attention to an issue of the 'Current' (August 25-31, 1990) which contains an Article by M.V. Kamath. We will consider that matter separately later on.

Dr. Subramanian Swamy vs. Mr. Arun Shourie:

Issue notice returnable on 8th October, 1990 stating therein why contempt proceedings should not be initiated."

6. Respondent Arun Shourie submitted his reply affidavit on 13.10.1990. We shall refer to his defence and objections at an appropriate place little later. Suffice, however, to note at this stage that in the counter affidavit, the respondent prayed that, in view of the sensitive nature of the facts, he would choose to refrain from setting out those facts in the affidavit but would prefer to put them in the form of a signed statement in a sealed cover for the perusal of the Court which may be treated as an integral part

of the counter affidavit. The Court, however, on 04.03.1991 rejected his prayer and observed that the procedure suggested by the respondent was not an acceptable procedure and was inconsistent with recognized form of the pleadings. The respondent was granted liberty to withdraw the sealed cover from the Court. He was given an opportunity to file additional affidavit.

7. The matters remained dormant for many years. On 25.08.1998[3], a three Judge Bench directed that these matters be placed before a Constitution Bench.

8. This is how these matters have come up for consideration before the Constitution Bench. We have heard Mr. Mohan Parasaran,

[3] These contempt matters relate to comments made by the alleged contemnors against Shri Justice Kuldip Singh after he had submitted his report as Chairman of the Enquiry Commission set up by the Central Government.

In Contempt Petition No.9/90 an objection has been raised by Shri D.D. Thakur, the learned senior counsel appearing for the alleged contemnor that the petition is not maintainable since consent of the Attorney General for India or the Solicitor General for India was not obtained as required by Section 15 of the Contempt of Courts Act, 1971. A question arises as to whether in the absence of the consent of the Attorney General or the Solicitor General suo moto proceedings can be initiated against the alleged contemnor. Shri D.D. Thakur has, however, submitted that since the alleged contempt arose more than one year back, Section 20 of the Contempt of Courts Act, 1971 would operate as a bar against the initiation of suo moto proceedings for contempt against the alleged contemnor.

In Contempt Petition No.11 and 12 of 1990 there is the opinion of the Attorney General expressing the view that when a Supreme Court Judge is appointed as a Commissioner in a Commission of Enquiry he does not carry with him all the powers and jurisdiction of the Supreme Court and the functions discharged by him are statutory functions independent of the jurisdiction vested in the Supreme Court and, therefore, the alleged contempt of a sitting Judge of the Supreme Court in relation to the statutory functions discharged by him as a Commissioner cannot in law be regarded as a contempt of Supreme Court itself.

The learned counsel for the alleged contemnors have urged that truth can be pleaded as a defence in contempt proceedings and that the decision of this Court in Perspective Publications (Pvt.) Ltd. & Anr. vs. State of Maharashtra, (1969) 2 SCR 779 needs re-consideration. In our opinion, the questions that arise for consideration in these matters are of general public importance which are required to be considered by a Constitution Bench. We, therefore, direct that the matters be placed before a Constitution Bench.

learned Solicitor General and Mr. Ashok H. Desai, learned senior counsel for the respondent.

9. It may be observed immediately that the learned Solicitor General and learned senior counsel for the respondent in the course of arguments agreed that for exercising the *suo motu* power for contempt under Article 129 of the Constitution of India, the limitation provided in Section 20 of the 1971 Act has no application. There is no challenge before us about the legal position that there are no implied or express limitations on the inherent powers of the Supreme Court of India and, therefore, no limitations can be read into Article 129 of the Constitution.

10. The two principal questions that arise for consideration and need our answer are as follows:

(i) When a sitting Supreme Court Judge is appointed as a Commissioner by the Central Government under the 1952 Act, does he carry with him all the powers and jurisdiction of the Supreme Court? In other words, whether the functions which are discharged by the Supreme Court Judge as a Commissioner are purely statutory functions independent of the jurisdiction vested in the Supreme Court?

(ii) Whether truth can be pleaded as defence in contempt proceedings?

11. We shall take up the second question first. Some of the common law countries provide that truth could be a defence if the comment was also for the public benefit. Long back the Privy Council in *Ambard*[4] held that reasoned or legitimate criticism of judges or courts is not contempt of court. The Privy Council held:

> "The path of criticism is a public way; the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

12. In *Wills*[5] the High Court of Australia suggested that truth could be a defence if the comment was also for the public benefit. It said, "…The revelation of truth – at all events when its revelation is for the public benefit – and the making of a fair criticism based on fact do not amount to a contempt of court though the truth revealed or the criticism made is such as to deprive the court or judge of public confidence…".

13. The legal position with regard to truth as a defence in contempt proceedings is now statutorily settled by Section 13 of the 1971 Act (as substituted by Act 6 of 2006). The Statement of Objects and

[4] Ambard v. Attorney-General for Trinidad and Tobago; [(1936) AC 322].
[5] Nationwide News Pty. Ltd. v. Wills; [(1992) 177 CLR 1].

Reasons for the amendment of Section 13 by Act 6 of 2006 read as follows:

> "The existing provisions of the Contempt of Courts Act, 1971 have been interpreted in various judicial decisions to the effect that truth cannot be pleaded as a defence to a charge of contempt of court.
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> 2. The National Commission to Review the Working of the Constitution (NCRWC) has also in its report, *inter alia*, recommended that in matters of contempt, it shall be open to the Court to permit a defence of justification by truth.
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> 3. The Government has been advised that the amendments to the Contempt of Courts Act, 1971 to provide for the above provision would introduce fairness in procedure and meet the requirements of Article 21 of the Constitution.
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> 4. Section 13 of the Contempt of Courts Act, 1971 provides certain circumstances under which contempt is not punishable. It is, therefore, proposed to substitute the said section, by an amendment.
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> 5. The Contempt of Courts (Amendment) Bill, 2003 was introduced in the Lok Sabha on the 8th May, 2003 and the same was referred to the Department-related Parliamentary Standing Committee on Home Affairs for examination. The Hon'ble Committee considered the said Bill in its meeting held on the 2nd September, 2003. However, with the dissolution of the 13th Lok Sabha, the Contempt of Courts (Amendment) Bill, 2003 lapsed. It is proposed to re-introduce the said Bill with modifications of a drafting nature."

14. Clause 13(b), now expressly provides that truth can be valid defence in contempt proceedings. Section 13, which has two clauses (a) and (b), now reads as follows:

> "13. Contempts not punishable in certain cases- Notwithstanding anything contained in any law for the time being in force,—

> (a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;
>
> (b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*."

15. The Court may now permit truth as a defence if two things are satisfied, viz., (i) it is in public interest and (ii) the request for invoking said defence is *bona fide*.

16. A two Judge Bench of this Court in *R.K. Jain*[6] had an occasion to consider Section 13 of the 1971 Act, as substituted by Act 6 of 2006. In para 39 (page 311 of the report), the Court said:

> "……..The substituted Section 13 represents an important legislative recognition of one of the fundamentals of our value system i.e. truth. The amended section enables the court to permit justification by truth as a valid defence in any contempt proceeding if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. In our view, if a speech or article, editorial, etc. contains something which appears to be contemptuous and this Court or the High Court is called upon to initiate proceedings under the Act and Articles 129 and 215 of the Constitution, the truth should ordinarily be allowed as a defence unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice. Since, the petitioner has not even suggested that what has been mentioned in the editorial is incorrect or that the respondent has presented a distorted version of the facts, there is no warrant for discarding the respondent's assertion that whatever he has written is based

[6] Indirect Tax practitioners' Association v. R.K. Jain; [(2010) 8 SCC 281]

> on true facts and the sole object of writing the editorial was to enable the authorities concerned to take corrective/remedial measures."

Thus, the two Judge Bench has held that the amended section enables the Court to permit justification by truth as a valid defence in any contempt proceedings if it is satisfied that such defence is in public interest and the request for invoking the defence is *bona fide*. We approve the view of the two Judge Bench in *R.K. Jain*[6]. Nothing further needs to be considered with regard to second question since the amendment in contempt law has effectively rendered this question redundant.

17. It is now appropriate to consider the first question as to whether a sitting Supreme Court Judge who is appointed as a Commissioner by the Central Government under the 1952 Act carries with him all the powers and jurisdiction of the Supreme Court. In order to answer this question, it is appropriate to refer to relevant provisions of the two Acts, namely, the 1971 Act and the 1952 Act. 1971 Act has been enacted by the Parliament to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto. Section 2(a) defines "contempt of court" to mean 'civil contempt' or 'criminal contempt'. Civil contempt is defined in Section 2(b) while Section 2(c) defines criminal contempt. Omitting the definition of civil contempt, we

may reproduce the definition of criminal contempt in the 1971 Act, which reads:

> "2(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which -
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> (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
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> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
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> (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

18. The three expressions, "court" in clause (i), "judicial proceeding" in clause (ii) and "administration of justice" in clause (iii) of Section 2(c) are really important, to answer the first question. Sections 12 and 15 of 1971 Act are the other two sections which have some bearing. Section 12 prescribes punishment for contempt of court. Section 15 deals with cognizance of criminal contempt by the Supreme Court or the High Court on its own motion or on a motion made by the Advocate General or any other person with the consent in writing of the Advocate General. The expression "Advocate General" in clauses (a) and (b) of Section 15(1) in relation to the Supreme Court means Attorney General or the Solicitor General.

19. 1952 Act provides for appointment of Commissions of Inquiry and for vesting such Commissions with certain powers. Section 2(a)(i)

defines “appropriate Government” which means the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution and the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution. In relation to the State of Jammu and Kashmir, there is a different provision. Sections 4 and 5 deal with the powers and additional powers of Commission. Under Section 4, the Commission has powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the matters, namely, (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any court or office; (e) issuing commissions for the examination of witnesses or documents etc. Under Section 5(4), the Commission is deemed to be a civil court and when any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code is committed in the presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, forward the case to a magistrate

having jurisdiction to try the same. Under Section 5(5), any proceeding before the Commission is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

20. Section 5A empowers the Commission to utilize the services of certain officers and investigation agencies for conducting investigation pertaining to inquiry. Section 10 makes provision for every member of the Commission and every officer appointed or authorized by the Commission in exercise of functions under the Act is deemed to be a public servant within the meaning of Section 21 of the IPC.

21. Section 10A provides for penalty for acts calculated to bring the Commission or any member thereof into disrepute. The provision clothes the High Court with power to take cognizance of an offence stated in sub-Section (1) upon a complaint in writing made by a member of Commission or an officer of the Commission authorized by it in this behalf. Under sub-Section (5), the High Court taking cognizance of an offence under sub-Section (1) is mandated to try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a court of a Magistrate. Section 10A reads as under:

> "10A. Penalty for acts calculated to bring the Commission or any member thereof into disrepute. (1) If any person, by words either spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Commission or any member thereof

into disrepute, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) when an offence under sub-section (1) is alleged to have been committed, the High Court may take cognizance of such offence, without the case being committed to it, upon a complaint in writing, made by a member of a Commission or an officer of the Commission authorised by it in this behalf.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No High Court shall take cognizance of an offence under sub-section (1) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(5) A High Court taking cognizance of an offence under sub-section (1) shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a court of a Magistrate:

Provided that the personal attendance of a member of a Commission as a complainant or otherwise is not required in such trial.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) an appeal shall lie as a matter of right from any Judgment of the High Court to the Supreme Court, both on facts and on law.

(7) Every appeal to the Supreme Court under sub-section (6) shall be preferred within a period of thirty days from the date of judgment appealed from:

Provided that, the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

22. As is seen from above, the Commission has the powers of civil court for the limited purpose as set out in that Section. It is also treated as a civil court for the purposes of Section 5(4). The proceedings before the Commission are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code. But the real issues are: whether the above provisions particularly and the 1952 Act generally would bring the Commission comprising of a sitting Supreme Court Judge within the meaning of "Court" under Section 2(c)(i)? Whether the proceedings before the Commission are judicial proceedings for the purposes of Section 2(c) (ii)? Whether the functioning of such Commission is part of the administration of justice within the meaning of Section 2(c) (iii)?

23. We do not have any doubt that functions of the Commission appointed under the 1952 Act are not like a body discharging judicial functions or judicial power. The Commission appointed under the 1952 Act in our view is not a Court and making the inquiry or determination of facts by the Commission is not of judicial character.

24. Sections 19 and 20 of the Indian Penal Code define the words "Court" and the "Court of Justice" as under:

> "19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person, — who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if

> not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or
> who is one of a body of persons, which body of persons is empowered by law to give such a judgment.
>
> 20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially."

25. Though the 1971 Act does not define the term 'Court' but in our opinion, the 'Court' under that Act means the authority which has the legal power to give a judgment which, if confirmed by some other authority, would be definitive. The Court is an institution which has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions and if its procedure is judicial in character in such matters as the taking of evidence and the administration of oath, then it is a court. The Commission constituted under the 1952 Act does not meet these pre-eminent tests of a Court.

26. According to Stephen (Stephen's Commentaries on the Laws of England, 6th Edn., page 383) in every Court, there must be at least three constituent parts – the 'actor', 'reus' and 'judex': the 'actor', who complains of an injury done; the 'reus' or defendant, who is called upon to make satisfaction; and the 'judex' or judicial power, which is to examine the truth of the fact and to determine the law arising upon the fact and if any injury

appears to have been done, to ascertain, and by its officers to apply, the remedy.

27. In *Bharat Bank Ltd.*[7], the Constitution Bench was seized with the question whether Industrial Tribunal is a court within the meaning of Article 136 of the Constitution of India. Mehr Chand Mahajan, J. (as he then was) referred to the statement of Griffith, C.J. in *Huddart Parker & Co.*[8] and observed, "if a body which has power to give a binding and authoritative decision is able to take action so as to enforce that decision, then, but only then, according to the definition quoted, all the attributes of judicial power are plainly present." Mukherjea, J. on consideration of *Shell Co.*[9], *Huddart Parker & Co.*[8] and *Rola Co.*[10] stated, "the other fundamental test which distinguishes a judicial from a quasi-judicial or administrative body is that the former decides controversies according to law, while the latter is not bound strictly to follow the law for its decision. The investigation of facts on evidence adduced by the parties may be a common feature in both judicial and quasi-judicial tribunals, but the difference between the two lies in the fact that in a judicial proceeding the Judge has got to apply to the facts found, the law of the land which is fixed

[7] Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi; [AIR 1950 SC 188]
[8] Huddart Parker & Co. Pty. Ltd. v. Moorehead [8 CLR 330]
[9] Shell Co. of Australia, Ltd. v. Federal Commissioner of Taxation [(1931) AC 275]
[10] Rola Co.(Australia) Pty. Limited v. Commonwealth [69 CLR 185]

and uniform. The quasi-judicial tribunal, on the other hand, gives its decision on the differences between the parties not in accordance with fixed rules of law but on principles of administrative policy or convenience or what appears to be just and proper in the circumstances of a particular case. In other words, the process employed by an Administrative Tribunal in coming to its decision is not what is known as "judicial process".

28. In *Brajnandan Sinha*[11], a three Judge Bench of this Court had an occasion to consider the question whether the Commissioner appointed under Public Servants (Inquiries) Act, 1850 (Act 37 of 1850) is a Court. In that case, Coke on Littleton and Stroud was referred that says that "Court" is the place where justice is judicially administered. The Court also considered Section 3 of the Indian Evidence Act and Sections 19 and 20 of the Indian Penal Code and then observed, "the pronouncement of a definitive judgment is thus considered the essential *sine qua non* of a Court and unless and until a binding and authoritative judgment is pronounced by a person or body of persons, it cannot be predicated that he or they constitute a Court." *Bharat Bank Ltd.*[7] was also referred and so also decisions of this Court in *Maqbool Hussain*[12] and *S.A. Venkataraman*[13] and it was noted that in *S.A. Venkataraman*[13] following

[11] Brajnandan Sinha v. Jyoti Narain; [(1955) 2 SCR 955]
[12] Maqbool Hussain v. State of Bombay; [AIR 1953 SC 325]
[13] S.A. Venkataraman v. Union of India [AIR 1954 SC 375]

Maqbool Hussain[12], the Constitution Bench laid down that both finality and authoritativeness were the essential tests of a judicial pronouncement. The Court said that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. With reference to the provisions of Public Servants (Inquiries) Act vis-à-vis Contempt of Courts Act, 1952, the three Judge Bench held that the Commissioner appointed under Public Servants (Inquiries) Act is not a Court within the meaning of Contempt of Courts Act, 1952.

29. We are in full agreement with the legal position exposited in *Brajnandan Sinha*[11] and approve the same.

30. The judgment of the full Bench of Madras High Court *In Re : Mr. Hayles, Editor of "The Mail" and Anr.*[14] deserves consideration now. That was a case where a sitting Judge of the Madras High Court was appointed as a member of the Industrial Tribunal under Section 7 of the Industrial Disputes Act. The alleged contempt with which the contemnors were charged with contempt were both in relation to the proceedings for the Industrial Tribunal, though the Industrial Tribunal was presided over by the sitting Judge of the Madras High Court. The disputes between workers

[14] In Re : Mr. Hayles, Editor of "The Mail" and Anr.; [AIR 1955 Madras 1]

and managements of Amalgamations Limited which owned the newspaper "The Mail" fell for adjudication before the Industrial Tribunal. The contempt notice was issued by the Tribunal to the counsel for the Editor Govind Swaminathan and the Editor Hayles to show cause as to why action for contempt may not be initiated for criticism of the Tribunal. The respondent challenged the show cause notice on the ground that the Tribunal, though headed by a sitting Judge, did not have power to punish for contempt. While dealing with the above challenge, the full Bench of the Madras High Court held that a Judge of the High Court when appointed as sole member of the Industrial Tribunal, did not have the powers of a Judge of that High Court to punish persons for contempt of the Tribunal even under Article 215 of the Constitution of India.

31. The Division Bench of the Madras High Court in *P. Rajangam*[15] had an occasion to consider the question whether a writ of certiorari could be issued to quash the inquiry made by the Magistrate under Section 176 of the Code of Criminal Procedure read with Police Standing Order issued by the Government of Madras. While dealing with this question, the principal aspect that was under consideration before the Division Bench of the Madras High Court with regard to the nature of such inquiry was whether it was judicial or quasi judicial or non judicial. The Division Bench referred to the decision of this Court in *Brajnandan Sinha*[11]

[15] P. Rajangam, Sub-Inspector of Police and Ors. v. State of Madras and ors. [AIR 1959 Madras 294]

and ultimately held that the object of such inquiry was nothing more than to furnish materials on which action could be taken or not and the report by itself would purely be recommendatory and not one effective *proprio vigore.*

32. In *Shri Ram Krishna Dalmia*[16], this Court held that the inquiry by the Commission under the 1952 Act was neither a judicial nor a quasi judicial proceeding attracting the issue of appropriate writs under Article 226 of the Constitution of India.

33. The two Judge Bench of this Court in *Dr. Baliram Waman Hiray*[17] was concerned with a question whether a Commission of Inquiry constituted under Section 3 of the 1952 Act is a Court for the purposes of Section 195 (1)(b) of the Code of Criminal Procedure, 1973. The Court observed:

> "A Commission of Inquiry is not a court properly so called. A Commission is obviously appointed by the appropriate government 'for the information of its mind' in order for it to decide as to the course of action to be followed. It is therefore a fact-finding body and is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by it is of a legal character and it has the power to administer an oath will not impart to it the status of a court."

The Court further observed:

[16] Shri Ram Krishna Dalmia v. Shri Justice S.R.Tendolkar and ors; [1959 SCR 279]
[17] Dr. Baliram Waman Hiray v. Justice B. Lentin and ors; [(1988) 4 SCC 419]

"The least that is required of a court is the capacity to deliver a 'definitive judgment', and merely because the procedure adopted by it is of a legal character and it has power to administer an oath will not impart to it the status of a court. That being so, it must be held that a Commission of Inquiry appointed by the appropriate government under Section 3(1) of the Commissions of Inquiry Act is not a court for the purposes of Section 195 of the Code."

33.1. The Court agreed with the following observations of the Nagpur High Court in *M.V.Rajwade*[18] :

"The Commission in question was obviously appointed by the State Government "for the information of its own mind", in order that it should not act, in exercise of its executive power, "otherwise than in accordance with the dictates of justice and equity" in ordering a departmental enquiry against its officers. It was, therefore, a fact-finding body meant only to instruct the mind of the government without producing any document of a judicial nature. The two cases are parallel, and the decision must be as in '*In re Maharaja Madhava Singh* (D)' [LR (1905) 31 IA 239] that the Commission was not a court.

The term "court" has not been defined in the Contempt of Courts Act, 1952. Its definition in the Indian Evidence Act, 1872, is not exhaustive and is intended only for purposes of the Act. The Contempt of Courts Act, 1952 however, does contemplate a "court of Justice" which as defined in Section 20, Penal Code, 1860 denotes "a Judge who is empowered by law to act judicially". The word "Judge" is defined in Section 19 as denoting every person—

'Who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive....'

The minimum test of a "court of justice", in the above definition, is, therefore, the legal power to give a judgment which, if confirmed by some other authority, would be definitive. Such is the case with the Commission appointed

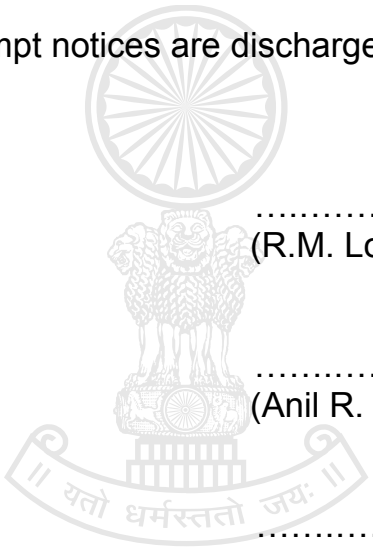
[18] M.V.Rajwade, I.A.S., Dist. Magistrate v. Dr. S.M. Hassan and ors.; [AIR 1954 Nagpur 71]

> under the Public Servants (Inquiries) Act, 1850, whose recommendations constitute a definitive judgment when confirmed by the government. This, however, is not the case with a Commission appointed under the Commissions of Inquiry Act, 1952, whose findings are not contemplated by law as liable at any stage to confirmation by any authority so as to assume the character of a final decision."

34. We agree with the view in *Dr. Baliram Waman Hiray*[17] and approve the decision of the Nagpur High Court in *M.V.Rajwade*[18]. We are also in agreement with the submission of Shri Mohan Parasaran, learned Solicitor General that a Commission appointed under the 1952 Act is in the nature of a statutory Commission and merely because a Commission of Inquiry is headed by a sitting Judge of the Supreme Court, it does not become an extended arm of this Court. The Commission constituted under the 1952 Act is a fact finding body to enable the appropriate Government to decide as to the course of action to be followed. Such Commission is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by the Commission is of a legal character and it has the power to administer oath will not clothe it with the status of Court. That being so, in our view, the Commission appointed under the 1952 Act is not a Court for the purposes of Contempt of Courts Act even though it is headed by a sitting Supreme Court Judge. Moreover, Section 10A of the 1952 Act leaves no matter of doubt that the High Court has been conferred

with the power to take cognizance of the complaint in respect of the acts calculated to bring the Commission or any member thereof into disrepute. Section 10A provides the power of constructive contempt to the Commission by making a reference to the High Court with a right of appeal to this Court. Our answer to the first question is, therefore, in the negative.

35. In view of the above reasons, the contempt petitions are dismissed and the contempt notices are discharged.



…….CJI.
(R.M. Lodha)

…….J.
(Anil R. Dave)

…….J.
(Sudhansu Jyoti Mukhopadhaya)

…….J.
(Dipak Misra)

NEW DELHI;
JULY 23, 2014.

…….J.
(Shiva Kirti Singh)