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ADMINISTRATIVE LAW

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Paper -VII

TOPIC- The Inquiries And Investigation By Administration

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INTRODUCTION

To enable the administration to discharge effectively the multifarious functions entrusted to it, it needs to exercise broad powers of conducting investigation and inquiry into various matters. The primary purpose of this technique is to collect information with a view to deciding upon a further course of action to meet a given situation or to find correctives to a given problem.

The administration, in the context of today's complicated socio-economic life, has come to depend more and more on ascertainment of facts. It is right to say that an action taken in ignorance of full facts may not only fail to correct the given situation but may even create problems. The policy-maker or the administrator can initiate effective remedial measures to deal with specific problems only when he is in full possession of the relevant information, facts, and figures, and to collect these, inquiries and investigations become inevitable tools in the hands of administrators.

The use of compulsory processes by the administration to collect information from an individual interferes with his liberty. While an investigation or inquiry may not always result in any follow-up action subsequently, and may not subject the individual concerned to any liability, nevertheless, the initiation of the investigation by itself may have serious consequences for him.

He may be subjected to a good deal of physical inconvenience, mental agony and expenses, and his reputation and business may stand injured in the process. It is, therefore, necessary to reconcile the administration exigency of holding an investigation into the affairs of an

individual with his interests and rights by providing adequate safeguards subject to which the administration may invoke its power of investigation.

Investigations and inquiries are resorted to for various purposes, such as, rule-making, law enforcement, adjudication of disputes, supervision, licensing, collecting information and "for purposes no more specific than illuminating obscure areas to find out what if anything should be done."[i]

THE NEED FOR ADMINISTRATIVE INQUIRY

Statutory inquiry:

Many administrative and quasi-judicial authorities exercising statutory powers are required to make some preliminary inquiry as a condition precedent to the exercise of such power, e.g.; hearing objections at a local inquiry before making an order of compulsory acquisition of land, under the Acquisition of Land Act, 1946, in England,[ii] or under **Section 5A of the Land Acquisition Act, 1894**,[iii] in India.

The need for such inquiry, broadly speaking, is to collect the views of the parties to be affected by the exercise of the statutory power, together with the relevant facts, and to place them before the government or other authority for its consideration in exercising the power, though, of course, the statutory authority is not bound to act according to the inquiry report but must exercise his independent view.[iv]

The procedure to be followed at these inquiries is laid down in the statute itself or in the statute rules. Generally speaking, the party affected by the resulting statutory order must be given notice of the inquiry.[v]

Ad hoc inquiry:

In the present inquiry, ad hoc, is to make some investigation as to any administrative matter of public importance, in order to enable the Government to obtain facts and other materials involved in such matter. In England, administrative inquiries of the present type are not governed by the Tribunals and Inquiries Act, 1958.

FUNCTIONS OF COMMISSION OF INQUIRY

In England, a tribunal may be set up under the **Tribunals of Inquiry (Evidence) Act, 1921,** when both Houses of Parliament resolve that it is expedient so to do to inquire into "a definite matter of urgent public importance."

In India, similarly, provision for the setting up of a Commission of Inquiry[vi] to make an investigation into any matter of public importance has been made by enacting the **Commissions of Inquiry Act, 1952**. Either the Government of India or the Government of a State can avail itself of the provisions of this Act, provided the conditions prescribed by **Section 3** of this Act are satisfied.

It is evident from the provision that when a resolution in that behalf is made by the Legislature, the appropriate government is bound to a Commission of Inquiry under this Act.[vii] Even in the absence of such resolution, the appropriate Government may appoint such commission to make an inquiry into a matter of public importance within its own jurisdiction.[viii]

There is nothing to bar a succeeding Ministry from advising the Governor to order an inquiry against an outgoing Ministry.[ix] Nor is there any legal bar to the appointment of an inquiry during the pendency of a suit or prosecution where the subject-matter before the Commission is different from that before the Commission.[x]

SCOPE OF THE FUNCTIONS OF A COMMISSION OF INQUIRY

The inquiry made by a Commission of Inquiry under the Act of 1952 is not a judicial or quasi-judicial inquiry. Its only function is to investigate facts and record its findings thereon and then to report to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it as in view.

The Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio igore.* For the same reason, even though the commission may make recommendation to the Government as to what measures may be adopted, including punishment for future action as a deterrent for delinquents in future, yet, not being a court, it cannot recommend the taking of action by way of punishment of the wrongdoer for past acts, for punishment for wrongs already committed can be imposed only by a court of law.

The purpose of inquiry may be:

1. To ascertain facts as to enable the appropriate Legislature to undertake legislation relating to a matter of public importance.

2. To make an administrative investigation into certain facts, it is legitimate to hold an inquiry for investigation of facts for the purpose of taking appropriate legislative or administrative measures to maintain the purity and integrity of political administration in the state.

3. A matter does not cease to be of public importance merely because the minister who is involved has ceased to hold his office,[xi] or because there has been no public agitation over it.[xii]

4. In order that a Commission may effectively carry out the foregoing powers, it may exercise ancillary powers, e.g.

4.1. To collect materials;

4.2. To record its findings on the facts investigated;

4.3. To express its views on the facts so found;

4.4. To recommend future action, as an advisory body;

4.5. To permit inspection of documents produced before it, to a party appearing in the matter.[xiii]

On the other hand, the Legislature or the executive cannot usurp judicial powers belonging to the courts by setting up a Commission of Inquiry.[xiv] Hence, a Commission of Inquiry cannot be set up with power "to recommend the action which should be taken as and by way of securing redress or punishment, the latter being functions of a court of law.[xv]

The Supreme Court has held[xvi] (6:1) that allegations into the conduct of Ministers of a State Government are a matter of public importance, which the Union Government would be competent to inquire into, as the 'appropriate Government' under **Section 3(1) of the Commission of Inquiry Act, 1952.** If so, in such a matter both the Union and State Governments would be entitled to exercise the power under this Act, to appoint parallel Commissions.

Under **Section 7(1) (a)**, the Government has the discretion to discontinue a Commission if at any time it is of the opinion that the inquiry was necessary; and the court cannot quash such order in the absence of malafides.

Since the Commission is simply a fact-finding body, without any power of adjudication, there is no bar to its appointment pending any litigation

PROCEDURE OF THE COMMISSION

1. Subject to any rules made by the appropriate Government in this behalf, the Commission of Inquiry may regulate its own procedure and to decide whether it will sit in private or in public.[xvii] The Commission has the power of a civil court in respect of summoning of witnesses; production of documents, receiving evidence on affidavits and such other powers as may be specified in the notification creating the Commission.

2. Since the Commission of Inquiry is an administrative body and not a judicial or quasi-judicial tribunal, it is not bound by the rules of evidence. It is not trying any cause between contesting parties and its proceedings are not as formal as in a judicial inquiry.

3. The Commission may proceed on affidavits and there is no scope for cross-examination of any witness by a party likely to be affected by the proceedings of the Commission unless the witness gives oral evidence.[xviii]

4. Since the proceedings before the commission is not a quasi-judicial procedure, and the Commission is a purely fact-finding body, there is no question of invoking the rules of natural justice, except in so far as they are incorporated in the Act itself.

LEGAL STATUS OF COMMISSION

1. Not being a quasi-judicial body, the members of a Commission of Inquiry claim that absolute privilege from defamation which belongs to judicial and quasi-judicial authorities.

2. Similarly, not being a court, the members of a Commission of Inquiry cannot, in the absence of statutory protection, claim immunity from contempt of court. But they cannot be held guilty for contempt merely by reason of the fact that the commission has been set up for the inquiry into the same matter relating to which a suit or other proceeding is pending in a court of law because the scope of the Commission and the court are altogether different.

3. Conversely, the law of contempt being applicable only to courts of justice and to the judges of such courts,[xix] and a Commission of Inquiry not being a court, a person cannot be convicted for the offence of contempt of court for offending utterances against a Commission of Inquiry, in the absence of statutory provision in that behalf.[xx]

4. It follows that a Commission of Inquiry, in India, cannot punish anybody under the Contempt of Courts Act, for violating its own orders.

5. As a statutory body, a Commission of Inquiry is subject to the writ jurisdiction of the High Court under **Article 226 and 227.**

On the other hand, the Commission being a temporary body, not having continuous sittings, where a High Court judge is appointed as a Commission of Inquiry, he does not demit his office as a judge or cease to have the power to sit and act as a Judge of the High Court whenever he has time to do so.

POWERS TO OBTAIN INFORMATION

Information of varied character is usually needed by administrative authorities to better discharge their assigned functions. To this end, statutes confer coercive powers on these authorities enabling them, inter alia, (1) to require the filing of reports and returns; (2) to summon witnesses; (3) to compel production of documents; (4) to search and seize; (5) to inspect.

Some statutes like the Income-tax Act, 1961 confer all these powers; some like the Commissions of Inquiry Act, 1952 confer some of these powers, and some confer only one of these powers. An authority can, however, employ only such of the coercive processes as the statute in question sanctions. No coercive method can be employed without the authority of law.[xxi]

Thus, if a body does not have the legal power to compel the attendance of the witnesses or production of the documents then it can only issue letters requesting persons to appear and/or produce documents and it is open to the persons so requested to comply with the some or not.

SEARCH AND SEIZURE

Powers of search and seizure are gradually assuming importance in this administrative age. Powers of search and seizure are being increasingly conferred on administrative authorities under various statutes for law enforcement. Power of search and seizure in any system of jurisprudence is an overriding power of the State for protection of social security and that power is necessarily regulated by law.[xxii]

Section 18 of the Central Excises and Salt-tax Act, 1944, Section 5(3) of the Commissions of Inquiry Act, 1952, **Section 132 of the Income Tax Act, 1961,** are only a few, amongst a horde, of such statutory provisions authorizing the respective authorities under them to exercise the power of search and seizure. The power of search and seizure is of a drastic nature as its exercise constitutes a serious invasion of the affected individual's privacy, freedom, business, and reputation. Therefore, to minimize the chance of such power being misused, the question of procedural safeguards, subject to which such a power may be exercised, becomes a matter of some significance.

SELF INCRIMINATION

A fundamental canon of Anglo-American criminal jurisprudence is the privilege against self-incrimination which is guaranteed in India by Article 20(3) of the Constitution which runs as: "No person accused of any offense shall be compelled to be a witness against himself." At times, certain statutes also provide the same protection, e.g., section 6 of the Commissions of Inquiry Act, 1952.

Article 20(3) as interpreted by the Supreme Court, has become inapplicable to administrative inquiries. In *Raja Narayanlal* v. *Mistry*,***[xxiii]*** on receiving the report of the Registrar of Companies that the appellants managed companies were being run in fraud of the contributors and disclosed an unsatisfactory state of affairs, the Government of India appointed an inspector to investigate into the affairs of the companies in question.

The inspector who could examine any person on oath was told to bear in mind that for a successful prosecution of the appellant, the evidence in support of the charge must be "clear, tangible and cogent." The appellant claimed the privilege against self-incrimination under **Article 20(3)** on the ground that the main object behind investigation was to discover whether he had committed any offense or not.

Rejecting his claim, the court held that the privilege was available to an accused person only, and as no formal accusation was laid against the appellant, he could not claim the privilege. The report of the registrar could hardly amount to an accusation; it was submitted to the Government to enable it to decide whether it could undertake an investigation.

The purpose of the inquiry was to find out how the affairs of the company were being carried on; a prosecution might be launched ultimately against the appellant but that could not retrospectively change the complexion or the character of the investigation.

JUDICIAL REVIEW OF ORDERS OF A COMMISSION OF INQUIRY

In India, it has been held that the appointment of a Commission of Inquiry can be challenged on the ground of ultra vires or mala fides.

Denial of procedural fairness is clearly an available ground in the review of decisions made by non-statutory investigations, as illustrated in the cases considered above.[xxiv] The grounds of review which comprise abuse of power, such as taking into account irrelevant considerations or *Wednesbury* unreasonableness, depend upon the construction of the statute as a whole in order to determine whether a discretionary power has been abused. In the absence of a statutory description of the ambit of power, the task of determining whether a power is abused becomes difficult.

However, there is no fundamental doctrine precluding review on these grounds and they were considered in the context of a non-statutory inquiry in *The State of Victoria v The Master Builders. Association of Victoria*.[xxv]

Section 3(1) of the Act 1952, has come up before the courts for interpretation of the conditions specified in the above provision, and it has been held that when an order constituting a Commission under this Act is made, the party into whose affairs the investigation is directed is challenged the validity of the order on the following grounds, inter alia:

1. That the conditions specified in section 3(1) have not been fulfilled.

2. That the order is mala fide, but the mere existence of political rivalry is not enough.

3. That the order is unconstitutional, having violated **Article 14** of the Constitution.

4. That the order is ultra vires.

CONCLUSION

The first concern of an investigator must be to ensure that the investigation does not step outside the ambit of the relevant statutory power. A so-called non-statutory investigation may be no more than an ultra vires exercise of power, with serious consequences in the event of any attempt to exercise coercive power.

On the other hand, there is nothing to stop government asking questions of anybody and thus conducting an investigation outside any statutory framework. This may involve an exercise of prerogative or common law power.

Such an investigation may be subject to privacy legislation and certainly must comply with the common law principles of procedural fairness. It may also be subject to judicial review. While a non-statutory investigation operates outside the parameters of a statute, it does not operate beyond the reach of administrative law.

An investigation undertaken outside any statutory framework may be no more than an instance of ultra vires administrative action. On the other hand, a non-statutory inquiry may legitimately be established to give advice or implement a program. Such an inquiry may need to determine on the basis of first principles issues relating to procedure and the proper ambit of its powers.

If the investigator fails to recognize the issues he or she may contravene common law principles or applicable general legislation such as freedom of information, privacy or archives legislation, copyright laws applying to tapes and transcripts created in the course of the investigation and the law of defamation and qualified privilege with respect to the ultimate report. If the investigation is conducted in a context involving litigation, proper responses also need to be made to subpoenas or discovery.