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## P. V. JAGANNATH RAO &amp; ORS.

v.

## STATE OF ORISSA &amp; ORS.

April 16/30, 1968\*

[J. C. SHAH, V. RAMASWAMI, V. BHARGAVA, G. K. MITTER  
AND C. A. VAIDIALINGAM, JJ.]

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*Commission of Inquiries Act (60 of 1952), s. 3—Setting up of Commission for collection of facts for future action—Partly due to political rivalry but dominant purpose bona fide—Validity—Some items in Notification appointing Commission subject to appeal in civil court—Setting up of Commission, if constitutes contempt of court.*

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The appellants were Chief Ministers and Ministers of the respondent-State. In Parliament, the State Legislature and from public platforms, it was alleged that during their tenure of office the appellants were guilty of acts of serious misconduct, corruption, abuse of power, misfeasance and malfeasance. Therefore, the State Government, in exercise of its powers under s. 3 of the Commission of Inquiries Act, 1952, issued a notification appointing a Commission of Inquiry to inquire into and report on the matters, 'so that facts may be found which alone will facilitate rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order *in future*'. The appellants filed writ petitions for setting aside the Notification, but the High Court dismissed them.

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In appeal to this Court, it was contended that: (1) An inquiry for mere collection of facts unrelated to any future course of Government action or legislative policy does not fall within the purview of s. 3 of the Act and it is not a valid exercise of statutory power to appoint such a Commission; (2) the Commission was set up for a purpose alien to the statute, in that it was set up by the State Government not in the public interest but for the collateral purpose of getting rid of political rivals by character assassination; and (3) the appointment of the Commission constituted contempt of court in that some of the items referred to in the impugned notification were the subject matter of a first appeal pending in the High Court.

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HELD: (1) The preamble to the notification shows that the object of setting up the Commission in the present case was to take appropriate legislative or administrative measures for maintaining high standards of public conduct and purity of political administration in the State *in future*. Therefore, the notification falls within the ambit of s. 3 of the Act. [801 A—C, 803 D-E]

*Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar*, [1959] S.C.R. 279, explained.

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(2) It may be that the appointment of the Commission of Inquiry in the present case was partly on account of political rivalry between the party in power and those against whom the inquiry was ordered, but the dominant purpose of setting up the Commission was to promote measures for maintaining purity and integrity of the administration in the political life of the State in future and not the character assassination of rivals. Therefore, the impugned notification was issued *bona fide* and is legally valid. [805 A-B; 807 R-E]

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*The King v. Minister of Health*, [1929] 1 K.B. 619, referred to.

\*The order dismissing the appeals was pronounced on April 16, 1968 and the Judgment was delivered on April 30, 1968.

*Rex v. Brighton Corporation ex-parte Shoosmith*, 96 L.T. 762, *Earl Fitzwilliam's Wentworth Estate Co. Ltd. v. Minister of Town and Country Planning*, [1951] 2 K.B. 284, applied. A

(3) To constitute contempt of court there must be involved some 'act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority' or something 'calculated to obstruct or interfere with the due course of justice or the lawful process of the courts.' [808 H] B

In the present case, the suits were filed for damages for defamation in relation to allegations of corruption. There was no factual inquiry into the allegations and the suits were decided on the basis of burden of proof: Therefore, it could not be said that the inquiry ordered was in relation to the very matters which were the subject matter of the first appeal filed in the High Court against the decision in the suits. [808 C—E] C

Further, the scope of the trial by courts of law and the scope of an inquiry by the Commission are altogether different, and therefore, the inquiry by the Commission would not amount to an usurpation of the function of courts of law. [808 E]

In any case, it cannot be said that the Commission would be liable for contempt of court, if it proceeded to inquire into matters referred to it by the Government notification, because, in appointing the Commission the State Government was exercising a statutory power and in making the inquiry the Commission would be performing a statutory duty. The respondents in this case have done nothing to obstruct or interfere with the lawful powers of the court by acting *bona fide* and by discharging statutory functions under the Act. [808 E—G] D

*Reg. v. Gray*, [1900] 2 Q.B. 36 and *Arthur Reginald Perera v. The King*, [1951] A.C. 482, 488, applied. E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1148—1150 of 1968.

Appeals from the judgment and order dated February 22, 1967 of the Orissa High Court in O.J.C. Nos. 396, 408 and 418 of 1967. F

*A. K. Sen, Rajendra Mohanty, K. R. Chaudhury and K. Rajendra Choudhury*, for the appellants.

*C. K. Daphtary, Attorney-General, Ashok Das, Advocate-General for the State of Orissa, Santosh Chatterjee, B. B. Ratho and R. N. Sachthey*, for respondents Nos. 1, 2 and 4.

*Lal Narain Singh, Advocate-General for the State of Bihar and R. K. Garg*, for intervener No. 1. G

*B. Sen, M. K. Banerjee, S. K. Dholakia and J. B. Dadachanji*, for intervener No. 2.

The Judgment of the Court was delivered by

**Ramaswami, J.** These appeals were heard on April 15 and April 16, 1968 and at the close of the hearing we ordered that the appeals should be dismissed with costs and indicated that our reasons would be pronounced later. Accordingly our present judg- H

- A ment gives our reasons for the order which has already been passed.

B These appeals are brought against the common judgment of the Orissa High Court dated February 22, 1968 in O.J.C. Nos. 396, 408 and 418 of 1967. By these applications the petitioners therein prayed for an appropriate direction or order under Art. 226 of the Constitution for quashing and setting aside notification No. 813-EC dated October 26, 1967, issued by the Government of Orissa in exercise of the powers conferred on it by s. 3 of the Commissions of Enquiry Act (LX of 1952) and for other reliefs. The Schedule to the Notification gives the names of 15 persons against whom inquiry is to be made. The petitioners in C the three O.J.C.s have respectively been referred to in Items 6, 2 and 12 of the Schedule. In O.J.C. 418, Shri Harekrushna Mahtab, Shri Nabakrushna Choudhury, Shri Pabitra Mohan Pradhan, Shri Santanu Kumar Das and Shri Surendranath Patnaik were originally impleaded as opposite parties Nos. 5 to 9. Shri Biju Patnaik filed an application in this case to be impleaded as D an opposite party. As the other parties had no objection he was also impleaded as opposite party No. 10. Rules were issued and except opposite parties Nos. 3 and 6 the other opposite parties showed cause. By its judgment dated February 22, 1968 the High Court dismissed the applications, holding that the notification of the State Government dated October 26, 1967 appointing E the Commission of Inquiry was legal and valid. Against this judgment the petitioners in all the three O.J.C.s have preferred the present appeals by certificate of the Orissa High Court.

F Shri Harekrushna Mahtab was the Chief Minister of Orissa from 1947 to 1949. Shri Nabakrushna Choudhury was the Chief Minister from 1950 to 1956. In the 1957 General Election to the Orissa Legislative Assembly (hereinafter referred to as the 'Assembly'), out of 140 seats the Congress Party got only 56 seats. Sri Harekrushna Mahtab formed the Ministry with the support of other members but he had to resign in 1959 due to withdrawal of support by some of the groups in the Assembly. In May, 1959, he formed a coalition ministry with the help of G Ganatantra Parishad of which Sri R. N. Singh Deo was the leader. Sri Singh Deo became the Finance Minister and the Deputy Leader in the Coalition Government. During the coalition Ministry there developed acute difference of opinion in the Orissa Congress Legislative party over the conduct and programme of the coalition Ministry. The Congress Legislative party was divided H into two groups, one under the leadership of Sri Harekrushna Mahtab and the other under the leadership of Sri Biju Patnaik. Sri Harekrushna Mahtab had to resign in February, 1961 as he lost the support of the majority of the Congress Legislative party.

The Assembly was dissolved and there was President's rule for sometime. During the President's rule, a mid-term election was held in May, 1961. The Congress Party succeeded in capturing 80 seats out of 140 under the leadership of Sri Biju Patnaik. At that time the Ganatantra Parishad had joined the Swatantra Party of India. The dissident group of members under the leadership of Sri Harekrushna Mahtab defected from the Congress Party and formed a separate political party under the name of "Jana Congress". The case of the appellants is that from 1961 till the end of 1966 this group had its secret alliance with the Swatantra Party and went on creating obstruction from within to the smooth administration by the Congress Party which had a superior numerical strength. Sri Biju Patnaik was the Chief Minister, Shri Biren Mitra was the Deputy Chief Minister. There was a firm called "Orissa Agents" in the name of Mrs. Mitra which made supplies to some of the departments of the Orissa Government. A campaign was carried on by Sri Mahtab and Sri Pabitra Mohan Pradhan attacking the honesty of Sri Biren Mitra. There was a debate in the Assembly in which a direct attack was made on the honesty and integrity of Sri Mitra and there was a demand for appointment of a Commission of Inquiry. The Government of Orissa did not agree to the appointment of a Commission of Inquiry but Sri Biju Patnaik referred the matter to Sri Singh Deo, leader of the Opposition and Chairman of the Public Accounts Committee. Sri Singh Deo initially accepted the responsibility, but later on expressed his unwillingness. The Orissa Government had a special audit of the allegations and sent the report to the Public Accounts Committee in the year 1964. While the matter was pending with the Public Accounts Committee, Sri Biju Patnaik resigned the Chief Ministership of Orissa on October 1, 1963. He, however, continued to be the chairman of the State Planning Board till January 29, 1965 when Sri Biren Mitra was the Chief Minister. Sri Mitra dropped out Sri Pabitra Mohan Pradhan from the cabinet. During the tenure of the office of Sri Mitra as the Chief Minister of Orissa, some members of the Opposition in the Assembly, which included all the members of the Swatantra Party, filed a memorandum before the President of India alleging misappropriation, misconduct and fraud against Sri Patnaik, Sri Mitra and certain other Ministers and requested the President of India to appoint a Commission of Inquiry to inquire into these allegations. The President referred the Memorandum to his Council of Ministers. It is said the Central Government did not favour the appointment of a Commission of Inquiry but decided to have the allegations enquired into by the Central Bureau of Intelligence (hereinafter referred to as the C.B.I.). After receiving the preliminary report of the C.B.I. the Central Government rejected the demand for appointment of a Commission of Inquiry. A statement was

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A made in Parliament that certain improprieties were committed but  
 the examination did not reveal any misconduct, misappropriation  
 or fraud or abuse of power for personal gain. As a result of  
 the statement in the Parliament Sri Biren Mitra who was then the  
 Chief Minister submitted his resignation and Sri Sadasiv Tripathy  
 B was elected as the leader of the Congress Legislative Party and  
 carried on administration as the Chief Minister of Orissa till the  
 last General Election. Soon after the formation of the present  
 Ministry, the Governor of the State announced in his address to  
 the Legislature the decision to set up a Commission of Inquiry  
 to enquire into the charges of corruption and improprieties alleged  
 to have been committed by the Ministers who were in office  
 C from 1961 to 1967. The present Commission was appointed  
 in pursuance of the policy laid down in the address of the Governor.  
 The main ground of attack on behalf of the appellants was that  
 the notification was illegal because the Government exercised the  
 statutory power *mala fide* and for collateral purpose and that the  
 object of appointing the Commission of Inquiry was to get rid of  
 Sri Biju Patnaik and Sri Biren Mitra and to drive them out of the  
 D political life of Orissa. The High Court held that the allegation  
 of the appellants was not made out and upheld the legal validity  
 of the notification dated October 26, 1967 issued by the Orissa  
 Government.

E Sub-s. (1) of s. 3 of the Commissions of Inquiry Act, 1952  
 (No. LX of 1952), hereinafter referred to as the 'Act', provides as  
 follows :

F "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 the House of the People or, as the case may  
 be, the Legislative Assembly 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 func-  
 tions and within such time as may be specified in the  
 notification, and the Commission so appointed shall  
 G make the inquiry and perform the functions accordingly :

....."

Section 4 vests in the Commission the powers of a civil court while  
 trying a suit under the Code of Civil Procedure and reads as  
 follows :

H "4. Powers of Commission.—The Commission shall  
 have the powers of a civil court, while trying a suit under  
 the Code of Civil Procedure, 1908 (Act V of 1908),  
 in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person and examining him on oath;

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(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

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(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.”

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Section 5 empowers the appropriate Government, by a notification in the Official Gazette, to confer on the Commission additional powers as provided in all or any of the sub-ss. (2), (3), (4) and (5) of that section. Section 6 states :

“6. Statements made by persons to the Commission.—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement :

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Provided that the statement—

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(a) is made in reply to a question which he is required by the Commission to answer, or

(b) is relevant to the subject matter of the inquiry.”

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By s. 8 the Commission is empowered to regulate its own procedure including the time and place of its sittings and may act notwithstanding the temporary absence of any member or the existence of any vacancy among its members.

The notification of the Orissa Government dated October 26, 1967 is to the following effect :

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“HOME DEPARTMENT  
NOTIFICATION

The 26th October, 1967.

No. 813—EC.—WHEREAS pursuant to the mid-term general election of the State Legislative Assembly in 1961, Councils of Ministers headed by Shri Biju

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**A** Patnaik, Shri Biren Mitra and Shri Sadasiva Tripathy were formed in the State during different times during the period from the 23rd June 1961 till the 8th March 1967 and Shri Biju Patnaik, after laying down his office as Chief Minister, declared himself to be the Chairman, Planning Board and continued to function as Chairman, Planning Board during the period from the 4th October, 1963 to the 29th January 1965, during the Chief Ministership of Shri Biren Mitra;

**B** AND WHEREAS during the tenure of office of the aforesaid persons as Chief Ministers there were various allegations against the conduct of the aforesaid persons and some of the Ministers and Deputy Ministers of the State of Orissa, as specified in the Schedule hereto, by politicians, the general public and others, and the allegations apart from being put forward from public platforms by private persons and otherwise, have been the subject-matter of active agitation all through in the State Legislature and in the Parliament and some of such allegations were of such a nature that an enquiry was conducted thereon by the Central Bureau of Investigation and the Central Cabinet also held deliberations over the same ;

**C** AND WHEREAS on an active and careful consideration of all such allegations by the Government of Orissa, it appears to them :—

**D** THAT DURING THE AFORESAID PERIOD, *i.e.*, FROM THE 23RD JUNE 1961 TO THE 8TH MARCH 1967, THE SAID PERSON AS NAMED IN THE SCHEDULE :

**E** (1) committed various acts of misconduct, misappropriation, fraud, negligence, favouritism, nepotism, illegalities, irregularities, improprieties and abuse of their power in the matters of administration of the State :

**F** (2) abused their official positions for securing pecuniary and other benefits for themselves, members of their families, their relations, their friends, their partymen (Congressmen) and others in whom they were interested, from out of the funds of the State exchequer and otherwise to the detriment of the interests of the State;

**G** (3) committed breach of trust and acts of impropriety with respect to the properties and assets of the State with a view to further the interests of their party organisation, *i.e.*, the Congress;

(4) entered into contracts and other monetary transactions for the supply of machinery, tools, equipments and execution of works, themselves, or permitted their family members, relations, friends, partymen and others to enter into such contracts and transactions with the Government of Orissa, with different Departments of the Government of Orissa, with Corporations, Local Bodies, Statutory Bodies and with other Bodies with which Government of Orissa have or had interest, control or concern in utter disregard of the interests of the State in breach of the trust imposed on them by virtue of their Constitutional positions;

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(5) resorted to misuse of power, interfered in the processes of elections and administration of Local Bodies not only to help their friends, favourites and partymen but also at times for their own personal benefits;

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(6) acquired directly properties of the State either for themselves or for the benefit of the members of their families or relations or others in whom they were interested;

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(7) advanced money and loans by way of favouritism out of the State exchequer in favour of themselves, members of their families, their relations and other persons in whom they were interested;

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(8) permitted wastage, misuse, misutilisation and misappropriation of the funds of the State in several ways to the detriment of the interests of the State in utter disregard of the canons of financial propriety and established rules and procedure from which a presumption of personal gains for themselves or for persons as aforesaid directly or indirectly arises;

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(9) caused wastage, misuse, misutilisation, misappropriation, illegal or irregular use of the funds of the State through contracts or other monetary transactions entered into by the Government without following the rules of law or the established procedure;

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(10) by way of favouritism and nepotism caused maladministration in matters of public services, namely, in the matter of appointments, transfers, promotions and dealing with corrupt officers;

(11) interfered with the administration of law and tried to pervert the course of justice by helping offenders to escape law;

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**A** (12) caused to the State Government huge financial loss which has given rise to a great economic crisis, serious retardation in the progress of trade, industry and commerce, agricultural output, serious problems of unemployment and has also vitiated the moral and general character of the people;

**B** (13) acted in several cases against constitutional proprieties, public policies and proper social and political conduct;

**C** (14) amassed wealth themselves, through members of their family, relations and other persons or permitted the members of their family, relations and other persons to amass wealth and their assets during the aforesaid period have increased disproportionate to the known sources of their income, by abuse of their constitutional positions.

**D** Under such circumstances the people in general and the Government have expressed a desire that the matters aforesaid regarding the aforesaid persons should be enquired into through a Commission of Inquiry so that facts may be found which alone will facilitate rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order in future.

**E** Under such circumstances, the Government of the State of Orissa are of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making a full inquiry into the aforesaid matters which are of definite public importance.

**F** NOW, THEREFORE, the State Government, in exercise of the powers conferred by section 3 of the Commission of Inquiries Act, 1952 (Act 60 of 1952), hereby appoint a Commission of Inquiry consisting of Shri Justice H. R. Khanna of the Delhi High Court to inquire into and report on and in respect of :—

**G** WHETHER THE PERSONS MENTIONED IN THE SCHEDULE, DURING THE AFORESAID PERIOD :

**H** (1) committed various acts of malfeasance, misfeasance, misappropriation, fraud, negligence, favouritism, nepotism, illegalities, irregularities, improprieties and abuse of their power in matters of administration of the State in different cases ?

(2) abused their official positions for securing pecuniary and other benefits for themselves, the members of their families, their relations, their friends and their partymen (Congressmen) and others in whom they were interested, from out of the funds of the State exchequer and otherwise to the detriment of the interests of the State ?

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(3) committed breach of trust and acts of impropriety with respect to the properties and assets of the State with a view to further the interests of their party organisation, *i.e.* the Congress ?

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(4) entered into contracts and other monetary transactions for the supply of machinery, stores, equipment and execution of works or permitted their family members, relations, friends and others in whom they were interested, with the Government of Orissa, in utter disregard of the law, rules and administrative procedure relating thereto and in breach of the confidence reposed on them, by virtue of their constitutional position ?

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(5) resorted to misuse of power, interfered in the process of election and administration of local bodies not only to help their friends, favourites and partymen, but also at times for their own personal benefit ?

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(6) acquired directly properties of the State either for themselves or for the benefit of members of their families, relations or other persons in whom and organisations in which they were interested ?

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(7) advanced money and loans in favour of themselves, members of their families, their relations and other persons in whom they were interested, out of the State Exchequer ?

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(8) permitted wastage, misuse and expenditure in various ways to the detriment of the interests of the State without following the established rules of procedure from which the presumption of personal gains for themselves directly or indirectly would arise ?

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(9) by way of favouritism and nepotism have caused maladministration in matters of public services, namely, appointments, transfers, promotions and dealing with corrupt officers ?

A (10) interfered in the administration of law and tried to pervert the course of justice by helping offenders to escape law ?

B (11) by their aforesaid conduct have put the State Government to huge financial loss which has resulted in a financial crisis for the State ?

(12) by their aforesaid conduct have hampered the entire industrial development in the State ?

(13) by their aforesaid conduct have given rise to serious problems of unemployment ?

C (14) by their aforesaid conduct have spread corruption in the Government machinery and have polluted the general public morale in the State and have also brought about a general demoralisation of the political, social, economic and moral aspects of the Society ?

D (15) by their aforesaid conduct have put the State to financial loss which has developed into a great economic crisis and has resulted in rapid retardation of the progress of trade, industry and commerce, a deplorable fall in the agricultural output, spread of corruption in all wings of administration and a general breakdown in the morale and character of the people of the State ?

E The Commission of Inquiry may also perform such other functions as are necessary or incidental to the inquiry.

F The Commission shall inquire into the detailed particulars pertaining to the aforesaid matters along with such other incidental and ancillary matters thereto that shall be placed before them by the State Government.

The Commission shall inquire into the financial implications of the aforesaid matters.

The Commission shall make its report to the State Government on or before 30th April, 1968.

G AND WHEREAS the State Government are of opinion that having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4), sub-section (5) and sub-section (6) of section 5 of the Commission of Inquiry Act, 1952 shall be made applicable to the said Commission, the State Government hereby directs that all the said provisions shall apply to the said Commission.

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The Commission shall have its headquarters at Bhubaneswar and may also visit such places as may be necessary in furtherance of the inquiry.

By order of the Governor

B. B. Rath

Additional Secretary to Govt.

### SCHEDULE

		From	To	
1. Shri Biju Patnaik	Chief Minister Planning Bd. Chairman, State	23-6-1961 4-10-1963	1-10-1963 29-1-1965	A
2. Shri Biren Mitra	Minister Chief Minister	23-6-1961 2-10-1963	1-10-1963 20-2-1965	B
3. Shri S. Tripathy	Minister Chief Minister	23-6-1961 21-2-1965	20-2-1965 8-3-1967	C
4. Shri Hilamoni Routray	Minister	23-6-1961	25-2-1967	
5. Shri Satyapriya Mohanty	Minister	2-10-1963	24-2-1967	D
6. Shri P. V. Jagannath Rao	Minister	23-6-1961	8-3-1967	
7. Shri H. B. Singh Mardaraj	Minister	23-6-1961	20-2-1965	
8. Shri R. P. Misra	Minister	21-2-1965	25-2-1967	
9. Shri Brundaban Nayak	Deputy Minister Minister	29-7-1962 2-10-1963	1-10-1963 28-6-1965	E
10. Shri T. Sanganna	Dy. Minister Minister	29-7-1962 2-10-1963	1-10-1963 27-2-1967	
11. Shri Prahallad Mallik	Dy. Minister	29-7-1962	28-2-1967	
12. Shri S. K. Sahu	Dy. Minister	29-7-1962	28-2-1967	
13. Shri Anup Singh Deo	Dy. Minister	21-2-1965	8-2-1967	
14. Shri Chittaranjan Naik	Dy. Minister	21-2-1965	26-2-1967	F
15. Shri Chandramohan Singh	Dy. Minister	29-7-1962	24-2-1967	

B.B. Rath Additional Secretary to Govt.

On behalf of the appellants Mr. Asoke Sen put forward the argument that the appointment of the Commission is not valid as the notification does not state what is the purpose for which the enquiry was to be made. To put it differently, the argument of the appellants was that the notification is not related to any future Government action or legislative policy and hence the notification was bad. The contention of Mr. Asoke Sen was that an inquiry for mere collection of facts unrelated to any future course of Government action or legislative policy does not fall within the purview of s. 3 of the Act and it is not a valid exercise of statutory power to appoint such a Commission. We are unable to accept the argument put forward on behalf of the appellants as correct. The purpose of the enquiry is stated in the preamble

- A to the notification which states that "the matters aforesaid regarding the aforesaid persons should be enquired into through a Commission of Inquiry so that facts may be found which alone will facilitate rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order in future". In other words, the object of the enquiry to
- B be made by the Commission appointed under s. 3 of the Act was to take appropriate legislative or administrative measures to maintain the purity and integrity of political administration in the State. In our opinion, the appointment of the Commission of Inquiry in the present case was in valid exercise of the statutory power by the State Government under s. 3 of the Act. Mr. Asoke
- C Sen referred in this connection to the decision of this Court in *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar*<sup>(1)</sup>, in which the appellant challenged the validity of the notification of the Central Government dated December 11, 1956 appointing a Commission of Inquiry to inquire into and report in respect of certain companies mentioned in the Schedule attached to the notification and in respect of the nature and extent of the control
- D and interest which certain persons named in the notification exercised over these companies. It was held by this Court, in agreement with the Bombay High Court, that the notification was legal and valid except as to the last part of cl. 10 thereof which empowered the Commission to recommend the action which should be taken as and by way of securing redress or punishment or to
- E act as a preventive in future cases. Clause 10 of the notification in that case stated :

"Any irregularities, frauds or breaches of trust or action in disregard of honest commercial practices or contravention of any law (except contraventions in respect of which criminal proceedings are pending in a Court of Law) in respect of the companies and firms whose affairs are investigated by the Commission which may come to the knowledge of the Commission and the action which in the opinion of the Commission should be taken as and by way of securing redress or punishment or to act as a preventive in future cases."

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- G The portion of Cl. 10 of the notification which was held to be *ultra vires* by this Court was the portion beginning with the words "and the action" and ending with the words "in future cases". It was argued on behalf of the appellant in that case that while the Commission may find facts on which the Government may take action, legislative or executive, the Commission cannot be
- H asked to suggest any measure, legislative or executive, to be taken by the appropriate Government. The argument was rejected by

(1) [1959] S. C. R. 279.

this Court. In this connection, S. R. Das, C.J. speaking for the Court observed at page 294 of the Report as follows :

"We are unable to accept the proposition so widely enunciated. An inquiry necessarily involves investigation into facts and necessitates the collection of material facts from the evidence adduced before or brought to the notice of the person or body conducting the inquiry and the recording of its findings on those facts in its report cannot but be regarded as ancillary to the inquiry itself, for the inquiry becomes useless unless the findings of the inquiring body are made available to the Government which set up the inquiry. It is, in our judgment, equally ancillary that the person or body conducting the inquiry should express its own view on the facts found by it for the consideration of the appropriate Government in order to enable it to take such measure as it may think fit to do. The whole purpose of setting up of a Commission of Inquiry consisting of experts will be frustrated and the elaborate process of inquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures the situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view the recommendations of a Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. From this point of view, there can be no objection even to the Commission of Inquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquents in future. But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective *proprio vigore* and the statement made by any person before the Commission of Inquiry is, under s. 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking any action 'as and by way of securing redress or punishment' which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a court of law properly constituted exercising its own discretion on the

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A facts and circumstances of the case and without being in  
any way influenced by the view of any person or body,  
howsoever august or high powered it may be. Having  
B regard to all these considerations it appears to us that  
only that portion of the last part of cl. (10) which calls  
upon the Commission of Inquiry to make recommenda-  
tions about the action to be taken 'as and by way of  
securing redress or punishment', cannot be said to be at  
all necessary for or ancillary to the purposes of the Com-  
mission. In our view the words in the latter part of  
the section, namely, 'as and by way of securing redress  
or punishment', clearly go outside the scope of the  
C Act."

In our opinion, the ratio of this case has no application in the  
present case, because there is nothing corresponding to the im-  
pugned part of cl. 10, in the notification of the Orissa Govern-  
ment dated October 26, 1967. On the contrary, we have already  
D pointed out that the object to set up the Commission of Inquiry  
in the present case was to take appropriate legislative or adminis-  
trative measures for maintaining high standards of public conduct  
and purity of political administration in the State. It follows  
therefore that the notification of the Orissa Government falls with-  
in the ambit of s. 3 of the Act and must be held to be legally valid  
and *intra vires*.

E We pass on to consider the next question arising in these ap-  
peals, namely, whether the power was exercised by the State Gov-  
ernment for a purpose alien to the statute. It was contended by  
Mr. Asoke Sen that there was a bitter political rivalry between the  
appellants on the one hand and Shri Pabitra Mohan Pradhan, Shri  
Harekrushna Mehtab, Shri Singh Deo and the other persons who  
F are at present in-charge of the Orissa administration. Reference  
was made by Mr. Asoke Sen to the political history of the State  
of Orissa from 1947 up to the General Elections, 1967 and in  
particular to the rivalry between Sri Biju Patnaik and Sri Singh  
Deo who was the leader of Opposition in the previous Government  
and also to the internal rivalry between the two political groups  
G in the Congress Legislative party, one led by Shri Harekrushna  
Mahtab and the other led by Shri Biju Patnaik and Shri Biren  
Mitra. It was urged that the Commission was set up by the pre-  
sent Orissa Government not in the public interest but for a col-  
lateral purpose, namely, for getting rid of Shri Biju Patnaik and  
Shri Biren Mitra and driving them out of the political life of Orissa.  
H Mr. Asoke Sen said that the object of the enquiry was character  
assassination of Shri Patnaik and Shri Biren Mitra and so the Com-  
mission was set up for a collateral purpose and the notification  
must be struck down as illegal and *ultra vires*. It is not possible,

in our opinion, to accept this argument as correct. It is admitted that there is political rivalry in Orissa between the appellants and the present Chief Minister of Orissa, Shri R. N. Singh Deo and also as between the appellants and the group of Congress dissidents led by Shri Harekrushna Mahtab, Shri Nabakrushna Choudhury, Shri Pabitra Mohan Pradhan, Shri Santanu Kumar Das and Shri Surendranath Patnaik. But we do not think that the existence of political rivalry is in itself sufficient to hold that the appointment of the Commission of Inquiry is illegal. Having perused the affidavits of the appellants and also those filed by the respondents in this case we are of opinion that the appointment of the Commission of Inquiry was not due merely to the existence of political rivalry of the parties but was impelled by the desire to set up and maintain high standards of moral conduct in the political administration of the State. As we have already pointed out, the object of appointing the Commission is stated in the notification itself as "the rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order in future". In the affidavit of Shri Pabitra Mohan Pradhan it is stated that the appointment of the Commission of Inquiry was one of the items of the common programme on which the Jana Congress and the Swatantra Party contested the General Elections of 1967. As a result of the popular mandate the Swatantra Party and the Jana Congress coalition took charge of the reins of Government and in accordance with the solemn promise made by those parties to the people of Orissa the Government decided to appoint a Commission of Inquiry in order to investigate the widespread corruption practised by the persons named in the Schedule to the impugned notification. The decision to appoint a Commission was also announced in the first address of the Governor to the Orissa Legislative Assembly after the 1967 General Elections. In paragraph 17 of the affidavit, Shri Pabitra Mohan Pradhan has further said that the object of the Jana Congress and the Swatantra Party was "to set up a clean administration, so that the State's resources should not go into the pockets of the corrupt group led by Shri Biju Patnaik and Shri Biren Mitra but should be used for giving a better life to the people of the State". In para 6 of the affidavit Shri Pabitra Mohan Pradhan further states : "I have always believed and still believe that politics is not for the purpose of serving the selfish ends and to satisfy the greed of any politician or any person or any group of persons. Politics is for the service of the people and involves sacrificing one's life and comforts for raising the living standard of the overwhelming poverty-stricken people of our State and our country so that they may enjoy a good life and hold up their heads with pride." In para 5 he has denied that there was any intention on his part to carry on character assassination of Shri Biju Patnaik, Shri Biren

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A Mitra and their group. It is true that the appointment of the Commission of Inquiry may have been made partly on account of the political rivalry between the parties but having perused the affidavits filed by the appellants and the respondents in this case, we are satisfied that the main object of the appointment of the Commission of Inquiry was not to satisfy the political rivalry of the politicians at present in power in Orissa but to promote measures for maintaining purity and integrity of the administration in future in the Orissa State. We are accordingly of the opinion that Mr. Asoke Sen is unable to make good his argument that the impugned notification is a *mala fide* exercise of the statutory power and it should be struck down as illegal.

C It is well-settled that if a statutory authority exercises its power for a purpose not authorised by the law the action of the statutory authority is *ultra vires* and without jurisdiction. In other words it is a *mala fide* exercise of power in the eye of law; *i.e.*, an exercise of power by a statutory authority for a purpose other than that which the Legislature intended (See *The King v. Minister of Health*)<sup>(1)</sup>. But the question arises as to what is the legal position if an administrative authority acts both for an authorised purpose and for an unauthorised purpose. In such a case where there is a mixture of authorised and unauthorised purpose, what should be the test to be applied to determine the legal validity of the administrative act? The proper test to be applied in such a case is as to what is the dominant purpose for which the administrative power is exercised. To put it differently, if the administrative authority pursues two or more purposes of which one is authorised and the other unauthorised, the legality of the administrative act should be determined by reference to the dominant purpose. This principle was applied in *Rex v. Brighton Corporation ex parte Shoosmith*<sup>(2)</sup> A Borough Corporation expended a large sum of money upon altering and paving a road, which was thereby permanently improved, but they decided to do the work at the particular time when it was done in order to induce the Automobile Club to hold motor trials and motor races upon it. The Court of Appeal (reversing the decision of the Divisional Court), refused to intervene, and it was observed by Fletcher Moulton, L.J. at page 764 as follows :

G "It cannot be denied that the physical act of changing the surface of a road when the corporation thought fit and proper so to do was within their statutory powers and there is no case proved by the evidence which shows either that they wastefully used the public money or that they did so with improper motives. The case would be quite different if one came to the conclusion that under the guise of improvement of a road, certain moneys had

(1) [1929] 1 K. B. 619.

(2) 96 Law Times 762.

been used really for diminishing the expenses of the Automobile Club or anything of that sort and that there had been a turning aside of public moneys to illicit purposes."

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The principle was applied by Denning, L.J. in *Earl Fitzwilliam's Wentworth Estate Co. Ltd. v. Minister of Town and Country Planning*<sup>(1)</sup>. It was a case concerning the validity of a compulsory purchase made by the Central Land Board, and confirmed by the Minister, under the provisions of the Town and Country Planning Act, 1947, in respect of a plot of land, ripe for development, which the owner was not prepared to sell at the existing use value. The landowner applied to have the order quashed, as not having been made for any purpose connected with the Board's function under the Act, but for the purpose of enforcing the Board's policy of sales at existing use values. The majority (consisting of Somerwell and Singleton, L.J.) held that, though the main purpose of the Board may well have been to induce landowners in general and the company, in particular, to adopt one of the methods of sale favoured by the Board, it was nevertheless in connection with their function as the authority operating the development charge scheme, and at any rate, "the case was not one in which it could be said that powers were exercised for a purpose different from those specified in the statute." Denning, L.J. disagreed with the majority and held that the dominant purpose of the Board was not to assist in their proper function of collecting the development charge, but to enforce their policy of sales at existing use value only. The dominant purpose being unlawful, the order was invalid, and could not be cured by saying that there was also some other purpose which was lawful. The Board and the Minister had misunderstood the extent of their compulsory powers, and their affidavits showed that they had overlooked that their ultimate purpose in exercising their powers should be connected with the performance of the Board's functions under the Act. At page 307 of the Report Denning, L.J. observed as follows:

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"What is the legal position when the board have more than one purpose in mind? In the ordinary way, of course, the courts do not have regard to the 'purpose' or 'motive' or 'reason' of an act but only to its intrinsic validity. For instance, an employer who dismisses a servant for a bad reason may justify it for a good one, so long as he finds it at any time before the trial. But sometimes the validity of an act does depend on the purpose with which it is done—as in the case of a conspiracy—and in such a case, when there is more than one purpose, the law always has regard to the dominant

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(1) [1951] 2 K. B. 284.

A purpose. If the dominant purpose of those concerned is unlawful, then the act done is invalid, and it is not to be cured by saying that they had some other purpose in mind which was lawful: see what Lord Simon, Lord Maugham and Lord Wright said in *Crofter Hand Woven Harris Tweed Co. v. Veitch* (1942 A.C. 445, 452-3, 469, 475).

B So also the validity of government action often depends on the purpose with which it is done. There, too, the same principle applies. If Parliament grants a power to a government department to be used for an authorized purpose, then the power is only validly exercised when it is used by the department genuinely for that purpose as its dominant purpose. If that purpose is not the main purpose, but is subordinated to some other purpose which is not authorised by law, then the department exceeds its powers and the action is invalid."

D Applying the test to the present case, we are of opinion that the dominant purpose of setting up the Commission of Inquiry was to promote measures for maintaining purity and integrity of the administration in the political life of the State and not "the character assassination" of Shri Biju Patnaik and Shri Biren Mitra and their group.

E It follows therefore that the impugned notification of the Orissa Government, dated October 26, 1967 is legally valid.

F We proceed to consider the next argument put forward on behalf of the appellants, namely, that the appointment of the Commission of Inquiry was illegal because it constituted contempt of Court. It was pointed out that items with regard to Shri Biren Mitra referred to in the impugned notification were the subject-matter of civil litigation and there was a First Appeal pending in the High Court. It appears that all the items of charges regarding Shri Biren Mitra were included in the Memorandum submitted by Shri Nisamoni Khuntia, Secretary, Sanjukta Socialist Party to the President of India. The memorandum was published in the Daily newspaper "The Eastern Times" on its front page on August 2, 1964 with bold headlines "Money amassed through corruption". Shri Harendra Chandra Pradhan was the Printer and publisher of that paper. Shri Biren Mitra filed two suits—O.S. No. 266 and 267 of 1964 against the Prajatantra Prachar Samiti (defendant No. 1), Shri Janaki Ballav Patnaik (Defendant No. 2), Shri Narendra Chandra Pradhan (Defendant No. 3) and Shri Nisamoni Khuntia (Defendant No. 4). It was alleged that there was collusion between defendants 1 to 4 and other political opponents of

Shri Biren Mitra. Defendants 1 to 3 filed a common Written Statement saying that the assertions in the memorandum were true. The 4th defendant filed a separate written statement to the same effect. The suits were heard by the Subordinate Judges, Cuttack. He held that the publication was on the face of it defamatory and libellous. No evidence was given on either side regarding the truth of the imputations in the publications. Holding that the burden of proof rested on the defendants the Subordinate Judge decreed the suit for damages for Rs. 200. It was contended by Mr. Asoke Sen that the decision of the Subordinate Judge was pending in the First Appeal in the High Court and so no Commission of Inquiry could be appointed with regard to the same matters. In our opinion, there is no substance in this argument. It should be noticed, in the first place, that none of the parties in the civil suit has adduced any evidence. Shri Biren Mitra did not choose to appear as a witness and present himself for cross-examination. The suits were decided purely on the basis of burden of proof. We do not wish to express any view as to whether these two suits were decided rightly or wrongly, but the fact remains that there was no factual enquiry into the allegations. It is also not possible to accept the argument that the present inquiry is in relation to the very matters which were the subject-matter of the civil suits and of the first appeal. It was pointed out by this Court in *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar*<sup>(1)</sup> that the inquiry cannot be looked upon as a judicial inquiry and the order ultimately passed cannot be enforced *proprio vigore*. The inquiry and the investigation by the Commission do not therefore amount to usurpation of the function of the courts of law. The scope of the trial by the Courts of law and the Commission of Inquiry is altogether different. In any case, it cannot be said that the Commission of Inquiry would be liable for contempt of Court if it proceeded to enquire into matters referred to it by the Government Notification. In appointing a Commission of Inquiry under s. 3 of the Act the Orissa Government is exercising a statutory power and in making the inquiry contemplated by the notification, the Commission is performing its statutory duty. We have already held that in the appointment of the Commission of Inquiry the Government was acting *bona fide*. It is, therefore, not possible to accept the argument of the appellants that the setting up of the Commission of Inquiry by the State Government or the continuance of the inquiry by the Commission so constituted would be tantamount to contempt of Court. To constitute contempt of court, there must be involved some "act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority" or something "calculated to obstruct or interfere with the due course of justice or the lawful process of the

(1) [1959] S. C. R. 279.

- A** courts" see *Reg. v. Gray*<sup>(1)</sup>, *Arthur Reginald Perara v. The King*<sup>(2)</sup>. The respondents in this case have done nothing to obstruct or interfere with the lawful powers of the Court by acting *bona fide* and discharging statutory functions under the Commission of Inquiry Act. We therefore, see no justification for holding that the issue of the notification under s. 3 of the Act or the conduct
- B** of the Inquiry by respondents amount to contempt of Court. We accordingly reject the argument of Mr. Asoke Sen on this aspect of the case.

It is for these reasons that we have dismissed these Civil Appeals by our order, dated April 16, 1968. One set of hearing fee.

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V.P.S.

*Appeals dismissed.*

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(1) [1900] 2 Q. B. 36.

(2) [1951] A. C. 482, 488.