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November 8.

BRAJNANDAN SINHA

v.

JYOTI NARAIN.

[BHAGWATI, B. P. SINHA and JAFER IMAM JJ.]

Public Servants (Inquiries) Act, 1850 (XXXVII of 1850)—A Commissioner appointed thereunder—Whether a court within the meaning of Contempt of Courts Act, 1952 (XXXII of 1952).

Held, that a Commissioner appointed under the Public Servants (Inquiries) Act, 1850 (XXXVII of 1850) is not a court within the meaning of the Contempt of Courts Act, 1952 (XXXII of 1952).

Shell Co. of Australia v. *Federal Commissioner of Taxation* ([1931] A.C. 275), *Huddart, Parker & Co.* v. *Moorehead* ([1909] 8 C.L. 330) *Rex* v. *Electricity Commissioners* ([1924] 1 K.B. 171), *Bharat Bank Limited* v. *Employees of Bharat Bank Ltd.* ([1950] S.C.R. 459), *Maqbool Hussain* v. *The State of Bombay* ([1953] S.C.R. 730), *Cooper* v. *Wilson* ([1937] 2 K.B. 309), *S.A. Venkataraman* v. *The Union of India and Another* ([1954] S.C.R. 1150), *Royal Aquarium and Summer and Winter Garden Society Ltd.* v. *Parkinson* ([1892] 1 Q.B. 431), *Dawkins* v. *Lord Rokeby* ([1873] L.R. 8 Q.B. 255), *Kapur Singh* v. *Jagat Narain* (A.I.R. 1951 Punjab 49) and *M. V. Rajwade* v. *Dr. S. M. Hassan,* (A.I.R. 1954 Nag. 71), referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 25 of 1954.

Appeal under Article 134(1)(c) of the Constitution from the judgment and order dated the 12th January 1954 of the Patna High Court in Criminal Miscellaneous Case No. 10 of 1953.

M. C. Setalvad, Attorney-General of India and *Mahabir Prasad, Advocate-General of Bihar* (*Balbhadra Prasad Sinha* and *P. G. Gokhale,* with them) for the appellant.

Purshottam Trikamdas, (*R. Patnaik,* with him) for the respondent.

1955. November 8. The Judgment of the Court was delivered by

BHAGWATI J.—This appeal with certificate under article 134(1) (c) of the Constitution arises out of an application under section 2 of the Contempt of Courts

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Act (XXXII of 1952) and section 8 of the Public Servants (Inquiries) Act (XXXVII of 1850) read with article 227 of the Constitution filed by the respondent against the appellant in the High Court of Judicature at Patna and raises an important question as to whether the Commissioner appointed under Act XXXVII of 1850 is a Court.

The respondent is a Member of the Bihar Civil Service (Executive Branch). The State Government received reports to the effect that the respondent had been guilty of serious misconduct and corrupt practices in the discharge of his official duties while employed as Sub-Divisional Officer at Aurangabad and they accordingly decided that an inquiry into the truth of the various charges against him should be made under the provisions of the Public Servants (Inquiries) Act, 1850 (Act XXXVII of 1850, hereinafter referred to as the Act) and Mr. Anjani Kumar Saran who was the then Additional District and Sessions Judge, Gaya, and was thereafter the District and Sessions Judge of that place was appointed Commissioner under the Act for making the inquiry. Gaya was fixed as the venue of the inquiry and the State Government also ordered that, during the pendency of the inquiry, the respondent will remain under suspension. The Government made the appointment aforesaid after obtaining the concurrence of the High Court on its administrative side which was obtained on the condition that an extra-temporary post of Additional District and Sessions Judge was created by the Government for the period Mr. Saran was occupied with the inquiry. The appointment was made on the 2nd June 1952 and it was expected that Mr. Saran would be able to complete the inquiry during a period of three months. The respondent, however, adopted dilatory tactics. He made various representations to the Government, one on the 6th June 1952 demanding that a Judge of the High Court be appointed as Commissioner under the Act to make the inquiry against him and that inquiry be made at Patna and not at Gaya, another on the 10th July 1952 protesting against the appointment of Mr. Saran

as Commissioner to hold the inquiry against him and demanding that a confirmed District and Sessions Judge be appointed as Commissioner in his place, and a third on the 17th November 1952 in which he requested the Government to appoint three Commissioners instead of one for holding the inquiry against him and also to pay the entire cost of his defence at the same rates at which the Special Public Prosecutor engaged by the Government was being paid and also to reimburse other incidental expenses to be incurred by him. All these representations were turned down by the Government. Being thus thwarted in his attempts to put off the inquiry on some pretext or the other, the respondent tried to evade the same and failed and neglected to reply to the queries made from him by the Commissioner. The Commissioner also could not communicate to him the orders passed by him from time to time because the respondent did not stay at the headquarters and did not leave his proper address for communication either at Gaya or at Motihari. On the 24th November 1952 the Commissioner passed an order calling upon the parties to attend the hearing of the proceedings before him on the 8th December 1952 and forwarded a copy of this order to the appellant for communication to the respondent. The District Magistrates of Champaran and Gaya who were requested to serve a true copy of the order upon the respondent could not do so as he was available neither at Motihari nor at Gaya and it was with great difficulty that he could be traced at Patna and the order served upon him. On the 18th December 1952, the Commissioner passed another order recording that he was feeling great difficulty in contacting the respondent and in communicating his orders to him. He observed that this was a highly undesirable state of affairs and that it was necessary that his orders should be communicated to the respondent as early as possible. A copy of this order was forwarded by the Commissioner to the appellant along with his letter dated the 20th December 1952 for information and doing the needful. The appellant thereafter wrote the letter complained against to

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the Commissioner on the 26th December 1952 being D.O. No. II/3C-306/52A-11614 which ran as under :—

"Dear Mr. Saran,

I am desired to refer to your memo. No. 8266 dated the 26th November 1952 and to say that Government are anxious not to allow Mr. Jyoti Narayan to adopt dilatory tactics and delay the progress of the inquiry against him. I am to request you to be vigilant against such tactics adopted by Mr. Narayan.

Yours sincerely,
(Sd.) B. N. Sinha".

The Commissioner acknowledged receipt of this letter by his D.O. letter No. 244, dated the 5th January 1953 stating that he would not allow the respondent to adopt any dilatory tactics and delay the progress of the inquiry against him.

On the 2nd February 1953, the respondent filed a petition before the Commissioner stating *inter alia* that he had not been able to engage any lawyer or counsel for want of necessary papers and copies and prayed for an adjournment of the inquiry. He also prayed for starting a contempt of Court proceeding against the appellant but the Commissioner rejected both his prayers. The order which was passed by the Commissioner on these applications may as well be set out *in extenso* inasmuch as it has a bearing on the question whether the appellant was guilty of contempt of Court for having addressed the letter complained against to him :—

"3-2-53. Another point raised in the first petition of the accused was that Mr. B. N. Sinha, Deputy Secretary to Government in addressing his D.O. letter No. 11614, dated the 26th of December, 1952, was guilty of contempt because he had interfered in my judicial discretion. I do not find anything in this letter from which it can be inferred that the author of the letter intended to influence me in the exercise of my judicial function. This letter was sent to me in reply to my memo. No. 8266 dated 26-11-1952 whereby I had forwarded a copy of my order dated 24-11-1952 for communication to Mr. Narayan. Mr.

B.N. Sinha wrote in his letter dated the 26th of December 1952 that Government are anxious not to allow Mr. Jyoti Narayan to adopt dilatory tactics and to delay the progress of the inquiry. Now it is to be noted that Mr. Narayan in paragraph 11 of his petition has himself charged the State Government for delaying the inquiry and thereby causing harassment to him. Therefore, it is obvious that both parties, that is, the State and the accused are anxious that the inquiry should be expedited so what Mr. B. N. Sinha meant by writing the D.O. was that the inquiry should be expedited. This cannot by any stretch of imagination be construed to mean that the aforesaid officer in any way tried to influence me in the discharge of my judicial functions. For these reasons I rejected the two prayers contained in the first petition of Mr. J. Narayan".

The respondent thereafter started proceedings in contempt against the appellant in the High Court of Judicature at Patna. A Rule was issued by the High Court against the appellant which was heard and finally disposed of on the 12th June 1954. The High Court was of the opinion that the Commissioner appointed under Act XXXVII of 1850 was a Court, that the Court was subordinate to the High Court, that the letter complained against amounted to a contempt of Court and that the appellant was guilty of such contempt. It accordingly sentenced the appellant to pay a fine of Rs. 250 and in default to undergo simple imprisonment for a period of one month. The appellant obtained a Certificate under Article 134(1)(c) of the Constitution from the High Court. The Certificate was, however, limited to the question as to whether the Commissioner appointed under the Act is a Court.

At the hearing before us, the appellant filed a petition for urging additional grounds which included *inter alia* the ground that the High Court erred in holding that the Commissioner appointed under the Act is a Court subordinate to the High Court within the meaning of the Contempt of Courts Act for the mere reason that its orders are open to be reviewed

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judicially in exercise of the power vested in the High Court under article 227 of the Constitution and also the ground that the High Court erred in holding that the letter complained against tended to interfere with or obstruct the course of justice and constituted contempt of Court.

The learned Attorney-General for the appellant contended in the first instance that the Commissioner appointed under the Act is not a Court. He next contended that even if he is a Court, he is not a Court subordinate to the High Court within the meaning of the Contempt of Courts Act. He lastly contended that the letter complained against did not tend to interfere with or obstruct the course of justice and did not constitute contempt of Court.

Prior to the enactment of the Contempt of Courts Act, 1952, there was in existence in India the Contempt of Courts Act, 1926 (XII of 1926). The various States also had their corresponding enactments. The Contempt of Courts Act, 1926 (XII of 1926) and the corresponding enactments in the States of Hyderabad, Madhya Bharat, Mysore, Pepsu, Rajasthan and Travancore-Cochin and the Saurashtra Ordinance II of 1948 were repealed by the Contempt of Courts Act, 1952 and a uniform Act to define and limit the powers of certain Courts in punishing contempts of Courts was enacted which extended to the whole of India except the State of Jammu and Kashmir. In section 2 of the Act, "High Court" was defined as meaning the High Court for a Part A State or a Part B State and including the Court of the Judicial Commissioner in a Part C State. Section 3 of the Act enacted :—

"3. (1) Subject to the provisions of sub-section (2) every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself.

(2) No High Court shall take cognisance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an

offence punishable under the Indian Penal Code (Act XLV of 1860)".

The word "Court" was not defined in the Act and the expression "Courts subordinate to the High Courts" would *prima facie* mean the Courts of law subordinate to the High Courts in the hierarchy of Courts established for the purpose of administration of justice throughout the Union.

It would be relevant, however, to notice the definitions of "Court" available elsewhere.

Coke on Littleton and Stroud defined the word "Court" as the place where justice is judicially administered.

According to Stephen, "In every Court, there must be at least three constituent parts—the actor, reus and judex; actor or plaintiff, who complains of an injury done; the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and by its officers to apply, the remedy".

Section 3 of the Indian Evidence Act (I of 1872) defines "Courts" as including all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence. This definition, however, has been held to be not exhaustive but framed only for the purpose of Indian Evidence Act and is not to be extended where such an extension is not warranted.

Sections 19 and 20 of the Indian Penal Code (Act XLV of 1860) define the words "Court" and the "Court of Justice" as under :—

"Section 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.

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Section 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".

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 can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a Court.

The Privy Council in the case of *Shell Co. of Australia* v. *Federal Commissioner of Taxation* (1) thus defined "Judicial Power" at page 295 :—

"Is this right ? What is "judicial power" ? Their Lordships are of opinion that one of the best definitions is that given by Griffith, C. J. in *Huddart, Parker & Co.* v. *Moorehead* (2) where he says : "I am of opinion that the words 'judicial power' as used in section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action".

Their Lordships further enumerated at page 297 certain negative propositions in relation to this subject :—

"1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision ;

2. Nor because it hears witnesses on oath ;

3. Nor because two or more contending parties appear before it between whom it has to decide ;

4. Nor because it gives decisions which affect the rights of subjects ;

5. Nor because there is an appeal to a Court ;

6. Nor because it is a body to which a matter is referred by another body.

See *Rex* v. *Electricity Commissioners*( )"

(1) [1931] A.C. 275. (2) [1909] 8 C.L.R. 330, 357.
(3) [1924] 1 K.B. 171.

and observed at page 298 :

"An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so-called. Mere externals do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a Court of Judicial power".

The same principle was reiterated by this Court in *Bharat Bank Limited* v. *Employees of Bharat Bank Ltd.* (1) and *Maqbool Hussain* v. *The State of Bombay* (2) where the test of a judicial tribunal as laid down in a passage from *Cooper* v. *Wilson* (3) was adopted by this Court :—

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites :—(1) The presentation (not necessarily orally) of their case by the parties to the dispute ; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence ; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties ; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law".

Maqbool Hussain's case, above referred to, was followed by this Court in *S. A. Venkataraman* v. *The Union of India and Another*\ ) where a Constitution Bench of this Court also laid down that both finality and authoritativeness were the essential tests of a judicial pronouncement.

It is clear, therefore, 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

(1) [1950] S.C.R.459. (2) [1953] S.C.R. 730.
(3) [1937] 2 K.B. 309. 340. (4) [1954] S.C.R. 1150.

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the essential tests of a judicial pronouncement.

It was, however, urged by Shri Purshottam Tircamdas for the respondent that the word "Court" should not be limited to a Court of Justice or a Court of law but should be construed in a wide sense, including within the connotation, other Courts which, though not Courts of Justice, were nevertheless Courts according to law and he relied upon a decision of the Court of Appeal in England in *Royal Aquariun and Summer and Winter Garden Society Ltd.* v. *Parkinson*( ) and the observations of Fry, L.J. at page 446 therein :

"I do not desire to attempt any definition of a "court". It is obvious that, according to our law, a court may perform various functions. Parliament is a court. Its duties as a whole are deliberative and legislative : the duties of a part of it only are judicial. It is nevertheless a court. There are many other courts which, though not Courts of Justice, are nevertheless courts according to our law. There are, for instance, courts of investigation, like the coroner's court. In my judgment, therefore, the existence of the immunity claimed does not depend upon the question whether the subject-matter of consideration is a Court of Justice, but whether it is a Court in law. Wherever you find a Court in law, to that the law attaches certain privileges, among which is the immunity in question".

The question involved in that case was whether the defendant was entitled to absolute immunity from action for anything done by him while performing his duty as a member of the County Council in dealing with the applications for licences for music and dancing. It was contended on behalf of the defendant that he was exercising a judicial function when he spoke the words complained of and therefore was entitled to absolute immunity in respect of anything he said. The argument that "wherever you find a Court in law, to that the law attaches certain privileges among which is the immunity in question" was used on behalf of the defendant and Fry, L. J. dealt with the same as under at page 447 :—

(1) [1892] 1 Q.B. 431.

"It was said that the existence of this immunity is based on considerations of public policy, and that, as a matter of public policy, wherever a body has to decide questions, and in so doing has to act judicially, it must be held that there is a judicial proceeding to which this immunity ought to attach. It seems to me that the sense in which the word "judicial" is used in that argument is this : it is used as meaning that the proceedings are such as ought to be conducted with the fairness and impartiality which characterize proceedings in Courts of Justice, and are proper to the functions of a judge, not that the members of the supposed body are members of a Court. Consider to what lengths the doctrine would extend, if this immunity were applied to every body which is bound to decide judicially in the sense of deciding fairly and impartially. It would apply to assessment committees, boards of guardians, to the Inns of Court, when considering the conduct of one of their members, to the General Medical Council when considering questions affecting the position of a medical man, and to all arbitrators. Is it necessary, on grounds of public policy, that the doctrine of immunity should be carried as far as this ? I say not. I say that there is ample protection afforded in such cases by the ordinary law of privilege. I find no necessity or propriety in carrying the doctrine so far as this argument requires".

Lord Esher, M. R. expressed himself as follows while dealing with this argument at page 442 :—

"It is true that, in respect of statements made in the course of proceedings before a Court of Justice, whether by judge, or counsel, or witnesses, there is an absolute immunity from liability to an action. The ground of that rule is public policy. It is applicable to all kinds of Courts of Justice ; but the doctrine has been carried further ; and it seems that this immunity applies wherever there is an authorized inquiry which, though not before a Court of Justice, is before a tribunal which has similar attributes. In the case of *Dawkins* v. *Lord Rokeby*(1) the doctrine was extended

(1) L.R. 8 Q.B. 255; L.R. 7 H.L. 744.

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to a military court of inquiry. It was so extended on the ground that the case was one of an authorized inquiry before a tribunal acting judicially, that is to say, in a manner as nearly as possible similar to that in which a Court of Justice acts in respect of an inquiry before it. This doctrine has never been extended further than to Courts of Justice and tribunals acting in a manner similar to that in which such Courts act. Then can it be said that a meeting of the county council, when engaged in considering applications for licences for music and dancing, is such a tribunal ? It is difficult to say who are to be considered as judges acting judicially in such a case".

The case of *Dawkins* v. *Lord Rokeby*(1) was a case where immunity was claimed by a witness who had given evidence before a military Court of inquiry. The case went to the House of Lords and the Lord Chancellor, in his speech at page 754, in 7 H.L. 744 observed :—

"Now, my Lords, adopting the expressions of the learned Judges with regard to what I take to be the settled law as to the protection of witnesses in judicial proceedings, I certainly am of opinion that upon all principles, and certainly upon all considerations of convenience and of public policy, the same protection which is extended to a witness in a judicial proceeding who has been examined on oath ought to be extended, and must be extended, to a military man who is called before a Court of Inquiry of this kind for the purpose of testifying there upon a matter of military discipline connected with the army".

Both these cases, the one before the Court of Appeal and the other before the House of Lords, were concerned with the extension of the principle of immunity of members of a tribunal or witnesses in judicial proceedings and the Courts logically extended the principle of immunity beyond the Courts of Justice to tribunals or bodies of persons functioning in a manner and according to procedure which was assimilated to a judicial inquiry. The extension of the

(1) L.R. 8 Q.B. 255; L.R. 7 H.L. 744.

immunity to such tribunals or bodies would not, however, constitute them Courts of Justice or Courts of law.

The position is thus summarised in the following passage in Halsbury's Laws of England, Hailsham Edition, Volume 8, page 526 :—

"Many bodies are not courts, although they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, such as assessment committees, guardians committees, the Court of referees constituted under the Unemployment Insurance Acts to decide claims made on the insurance funds, the benchers of the Inns of Court when considering the conduct of one of their members, the General Medical Council, when considering questions affecting the position of a medical man".

We must, therefore, fall back upon the tests laid down above for determining what is a Court strictly so-called within the connotation of the term as used in the Contempt of Courts Act. It would be appropriate at this stage to note the relevant provisions of the Public Servants (Inquiries) Act (XXXVII of 1850) which would fall to be considered for determining whether the Commissioner appointed under the Act is a Court or not.

The Act was passed for regulating inquiries into the behaviour of public servants and the preamble runs :—

"Whereas it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable from their appointments without the sanction of Government, and to make the same uniform throughout India ; It is enacted as follows :—"

Section 2 requires the articles of charges to be drawn out and a formal and public inquiry to be ordered whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any such person. The inquiry may be committed under section 3 either to the Court,

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Board or other authorities to which the person accused is subordinate or to any other person or persons specially appointed by the Government, Commissioners for the purpose. Sections 4 to 7 contain provisions in regard to the conduct of the prosecution and section 8 prescribes the powers of the Commissioners. This section has been particularly relied upon as constituting the Commissioners a Court, and runs as under :—

"*Section 8.* The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by the Code of Criminal Procedure, 1898, and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other persons resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature thereto. When the commission has been issued to a court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission".

Section 9 prescribes a penalty for disobedience to process issued as aforesaid for the purpose of the commission and sections 10 to 20 prescribe the procedure to be followed in the conduct of the inquiry. It may be noted that this procedure is assimilated as far as possible to the conduct of a prosecution in a Criminal Court of law and the person accused is given the fullest opportunity to enter upon his defence and lead evidence in order to clear himself of the charges levelled against him. Sections 21 and 22 lay down the functions of the Commissioners in regard to the report to be made by them to the Government of their proceedings under the commission and the powers of

the Government to pass final orders on such reports. These sections have an important bearing on the question before us and they enact :—

"*Section 21.*—After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

Section 22.—The Government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it thinks fit, refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case ; and will finally pass such orders thereon as appear just and consistent with its powers in such cases".

These provisions were considered by this Court in the case of *S. A. Venkataraman* v. *The Union of India and Another*(1). The question that arose for consideration there was whether an inquiry made and concluded under the Act amounted to prosecution and punishment for an offence as contemplated under article 20(2) of the Constitution. Articles of charge had been framed against the petitioner in that case and evidence had been led both by the prosecutor and by the defence and witnesses on both sides were examined on oath and cross-examined and re-examined in the usual manner. The Commissioner had found, on a consideration of the evidence, that some of the charges had been proved against the petitioner and had submitted a report to that effect to the Government. The President had accepted the opinion of the Commissioner and, in view of the findings on

(1) [1954] S.C.R. 1150.

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the several charges arrived at by the latter, was provisionally of the opinion that the petitioner should be dismissed. Opportunity was given to the petitioner under Article 311(2) of the Constitution to show cause against the action proposed to be taken in regard to him and after considering his representation and after consultation with the Union Public Service Commission, the President finally decided to impose the penalty of dismissal upon him and he was accordingly dismissed. After his dismissal, the police submitted a charge-sheet against him before the Special Judge. Sessions Court, Delhi, charging him with offences under sections 161 and 165 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act and upon that summons were issued by the learned Judge directing the petitioner to appear before his Court. The petitioner thereupon challenged the legality of this proceeding in a writ petition contending that the proceedings were without jurisdiction inasmuch as they amounted to a fresh prosecution for offences for which he had been prosecuted and punished already.

While considering whether under the circumstances there had been a violation of the fundamental right of the petitioner under Article 20(2) of the Constitution, this Court scrutinised the provisions of the Act and the position of the Commissioner appointed thereunder. Justice Mukherjea, as he then was, delivered the judgment of the Court and observed at page 1159 :—

"As the law stands at present, the only purpose, for which an enquiry under Act XXXVII of 1850 could be made, is to help the Government to come to a definite conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him, prior to giving him a reasonable opportunity of showing cause, as is required under article 311(2) of the Constitution. An enquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely and

nothing else. It is against this background that we will have to examine the material provisions of the Public Servants (Inquiries) Act of 1850 and see whether from the nature and result of the enquiry which the Act contemplates it is at all possible to say that the proceedings taken or concluded under the Act amount to prosecution and punishment for a criminal offence." ;

and at page 1160 :—

"A Commissioner appointed under this Act has no duty to investigate any offence which is punishable under the Indian Penal Code or the Prevention of Corruption Act and he has absolutely no jurisdiction to do so. The subject-matter of investigation by him is the truth or otherwise of the imputation of misbehaviour made against a public servant and it is only as instances of misbehaviour that the several articles of charge are investigated, upon which disciplinary action might be taken by the Government if it so chooses. The mere fact that the word "prosecution" has been used, would not make the proceeding before the Commissioner one for prosecution of an offence. As the Commissioner has to form his opinion upon legal evidence, he has been given the power to summon witnesses, administer oath to them and also to compel production of relevant documents. These may be some of the trappings of a judicial tribunal, but they cannot make the proceeding anything more than a mere fact finding enquiry. This is conclusively established by the provisions of sections 21 and 22 of the Act. At the close of the enquiry, the Commissioner has to submit a report to the Government regarding his finding on each one of the charges made. This is a mere expression of opinion and it lacks both finality and authoritativeness which are the essential tests of a judicial pronouncement. The opinion is not even binding on the Government. Under section 22 of the Act, the Government can, after receipt of the report, call upon the Commissioner to take further evidence or give further explanation of his opinion. When Special Commissioners are appointed, their report could be referred to the court or other authority

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to which the officer concerned is subordinate for further advice and after taking the opinion of the different authorities and persons, the Government has to decide finally what action it should take".

The Court was no doubt concerned in that case with finding whether the inquiry before the Commissioner was tantamount to a prosecution of the petitioner. While considering the same, however, the position of the Commissioner was discussed and the conclusion to which the Court came was that he was a mere fact finding authority, that the report made by the Commissioner to the Government was merely his expression of opinion and it lacked both finality and authoritativeness which are the essential tests of a judicial pronouncement. This conclusion is sufficient to establish that the Commissioner appointed under the Act was not a Court and his report or findings were not a definitive judgment or a judicial pronouncement inasmuch as they were not binding and authoritative and lacked finality. We are also of the same opinion. Apart from the above considerations which weighed with the Court in that case, we have also the provisions of section 8 of the Act itself which go to show that the Commissioners are given certain powers of the Civil and Military Courts in regard to punishing contempts and obstruction to their proceedings, summoning of witnesses, compelling the production of documents and for service of their process as also the same protection as Zila and City Judges. The very fact that this provision had got to be enacted shows that the position of the Commissioners was not assimilated to that of Judges and that they did not constitute Courts of Justice or Courts of law but were mere fact finding tribunals deriving whatever powers they could exercise under the very terms of the Act which created them. The power of punishing contempts and obstruction to their proceedings as is given to Civil and Criminal Courts by the Code of Criminal Procedure, 1898 was also similar in its nature and the very nature and extent of the power indicated that they were not Courts in the ordinary sense of the term. No such provision would have been

necessary to be enacted if in fact they were constituted Courts of Justice or Courts of law and it is no argument to say that these provisions were enacted even though they were not strictly necessary merely for the sake of abundant caution or clarification of the position. We are of the opinion that the Commissioner appointed under the Act, having regard to the circumstances above set out, does not constitute a Court within the meaning of the term as used in the Contempt of Courts Act.

Our attention was, however, drawn by Shri Purshottam Tricamdas to a decision of a Division Bench of the Punjab High Court in *Kapur Singh* v. *Jagat Narain*( ). That was a case directly in point and on all fours with the case before us. The learned Chief Justice of the Punjab High Court had been appointed a Commissioner under the Act in the matter of an inquiry against Sardar Kapur Singh, I.C.S., and Lala Jagat Narain, the editor, printer and publisher of an Urdu Daily newspaper published at Jullundur called The Hindu Samachar, was called upon to show cause why he should not be punished under section 3 of Contempt of Courts Act with regard to a leading article which appeared in his name in the issue of the paper dated the 12th March 1951. A preliminary objection was taken on his behalf that the Court had no jurisdiction to take proceedings against him for contempt and the argument was that the Court of the Commissioner appointed to hold an inquiry under the Act was not a Court and in any event was not a Court subordinate to the High Court. Mr. Justice Falshaw who delivered the judgment of the Court observed at page 50 in connection with this argument: "The Public Servants (Inquiries) Act itself seems clearly to indicate that a Commissioner or Commissioners appointed under the Act constitute a Court as they are given all the powers of a Court regarding the summoning of witnesses and other matters, and the only ground on which the learned counsel for the respondent could base his argument that the Commissioner does not constitute a Court was that he can

(1) A.I.R. 1951 Punjab 49

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give no final decision, but merely has to draw up a report giving his findings on the charge or charges against the respondent, which is to be forwarded to the Government. In my opinion, however, this fact alone is not sufficient to make the Commissioner or Commissioners any thing other than a Court and it is to be noted that the definition of Court in section 3, Evidence Act, is very wide indeed as it reads: "'Court' includes all Judges and Magistrates and all persons, except arbitrators, legally authorised to take evidence". The learned Judges there relied upon the definition of Court given in section 3 of the Indian Evidence Act which, as has already been noted, is framed only for the purposes of the Act and is not to be extended where such an extension is not warranted. This definition does not help in the determination of the question whether the Commissioners appointed under the Act constitute a Court and the attention of the learned Judges was not drawn to the position that finality and authoritativeness are the essential tests of a judicial pronouncement. We are of the opinion that the decision reached by the learned Judges of the Punjab High Court in that case was wrong and cannot help the respondent.

Our attention was also drawn to another decision of the Nagpur High Court in *M. V. Rajwade* v. *Dr. S. M. Hassan*(1). The question which came to be considered by the Court in that case was whether a commission appointed under the Commissions of Inquiry Act, 1952 was a Court within the meaning of section 3 of the Contempt of Courts Act, 1952, and while considering the provisions of that Act, the learned Judges of the Nagpur High Court incidentally considered the provisions of the Public Servants (Inquiries) Act, 1850. They rightly observed that "the term 'Court' has not been defined in the Contempt of Courts Act, 1952. The Act, however, does contemplate a 'Court of Justice' which as defined in section 20, Indian Penal Code, 1860, denotes 'a judge who is empowered by law to act judicially'. The least that is required of a Court is the capacity to deliver a "definitive judg-

(1) A.I.R. 1954 Nag. 71.

ment", and unless this power vests in a tribunal in any particular case, 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", and came to the conclusion that the commission appointed under the Commissions of Inquiry Act, 1952 is not a Court within the meaning of the Contempt of Courts Act, 1952. The learned Judges were merely considering the provisions of the Commissions of Inquiry Act, 1952 and were not concerned with the construction of the provisions of the Public Servants (Inquiries) Act, 1850 and whatever observations they made in regard to the provisions of the latter Act by way of comparing the same with the provisions of the former which they were there considering would not have the effect of putting on the provisions of the latter Act a construction which would be any avail to the respondent before us. The ratio which was adopted by the learned Judges was quite correct but it appears that they digressed into a consideration of the provisions of the Public Servants (Inquiries) Act, 1850 in order to emphasize the character and position of the commission appointed under the Commissions of Inquiry Act, 1952 even though it was not strictly necessary for the purpose of arriving at their decision, though it must be mentioned that while discussing the nature and function of the commission they expressed themselves correctly as under :—

"The Commission governed by the Commissions of Inquiry Act, 1952 is 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 & equity" in ordering a departmental enquiry against its officers. It is, therefore, a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature".

We are of the opinion that neither of these cases which have been relied upon by Shri Purshottam Tricamdas is of any help to the respondent or detracts

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from the true position as we have laid down above. The only conclusion to which we can come on a consideration of all the relevant provisions of the Act is that the Commissioner appointed under the Act is not a Court within the meaning of the Contempt of Courts Act, 1952.

In view of the conclusion reached above, we do not think it necessary to go into the question whether the Commissioner appointed under the Act is a Court subordinate to the High Court within the meaning of the Contempt of Courts Act. Nor do we think it necessary to express any opinion as to whether the letter complained against constituted a contempt of Court. We may, however, note in passing that the circumstances under which the letter came to be addressed by the appellant to the Commissioner, the terms thereof and the order which was passed by the Commissioner on the application made by the respondent to proceed against the appellant in contempt on date the 2nd February 1953 lend support to the argument which was advanced on behalf of the appellant that the letter complained against did not constitute contempt of Court.

The result, therefore, is that the appeal will be allowed, the order passed against the appellant by the Court below will be set aside and the original Criminal Miscellaneous Petition No. 10 of 1953 filed by the respondent in the High Court of Judicature at Patna will stand dismissed. The fine if paid will be refunded.