

District Administration Vs. Commissioner of Inquiry and ors.

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Court : Guwahati

Decided On : Sep-26-2006

Judge : D. Biswas and B.P. Katakey, JJ.

Appellant : District Administration

Respondent : Commissioner of Inquiry and ors.

Judgement :

B.P. Katakey, J.

1. The Government of Meghalaya in exercise of the power conferred by Section 3 of the Commission of Inquiry Act, 1952 (Act No. 60 of 1952) (hereinafter referred to as 'the Act'), upon forming an opinion about the necessity to appoint a Commission of Inquiry for the purpose of making an inquiry into a definite matter of public importance, namely, relating to the incident of police firing occurred on 30th September, 2005 at Tura in West Garo Hills District resulting in the death of four persons besides injury to a number of civilian and police personnel, vide notification dated 3rd January, 2006 appointed Justice D.N. Chowdhury, retired Judge of Gauhati High Court to inquire into the said incident of police firing, as one man Commission, with the terms of reference contained therein. The said notification reads as follows:

No. POL. 207/2005/28 - Whereas the Government of Meghalaya is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making

an enquiry into a definite matter of public importance.

Now, therefore, in exercise of the powers conferred under Sub-section (1) of Section 3 of the Commission of Inquiry Act, 1952, the Government of Meghalaya hereby appoint a Commission of Inquiry heading by Justice D.N. Chowdhury, Retired Judge of the Gauhati High Court to inquire into the incidents of Police firing which occurred on 30th September, 2005 at Tura in West Garo Hills District resulting in loss of life of 4 (four) persons, and, in particular, on ;

Terms of Reference of the Inquiry:

1. To determine the developments during the period immediately preceding the proposed public rally at Tura in West Garo Hills District, to protest against the State Government's acceptance of the report, of the State Level Committee on MBOSE and the Meghalaya Board of School Education (Amendment) Ordinance, 2005.
2. To cause a detailed enquiry into all aspects and circumstances of events leading to the incident of Police firing which occurred on 30th September, 2005 at Tura in West Garo Hills District resulting in the death of 4(four) persons at Tura besides injury to a large number of civilians and Police personnel.
3. To determine the adequacy of measures including preventive measures taken by the District Administration to maintain law and order in the aforesaid District, particularly Tura.
4. To determine as to whether the quantum of force resorted to by the Police on duty at the place of incident at Tura was justified or whether there has been any excess. If so, to fix responsibility.
5. Any other circumstances, which appears to be relevant to the Commission for being brought on record with suitable recommendation.
6. The Headquarter of the Commission of Inquiry will be Tura, West Garo Hills District.
7. The Commission of Inquiry shall submit its report within a period of 60 days from the date of issue of Notification.

This supersedes this Department's Notification No. POL. 207/2005/5 dated 7.10.2005.

Sd/- illegible

(P.J. Bazeley)

Chief Secretary to the Govt. of Meghalaya 3.1.2006

2. The Commission in exercise of the power conferred by Section 8 of the Act framed the regulation of procedure, namely 'Justice D.N. Chowdhury Commission of Inquiry (Regulations of Procedure) Order 2006', (hereinafter referred to as the Regulations Procedure) to regulate the procedure to be adopted while making the inquiry pursuant to the said notification dated 3.1.2006 issued by the Government of Meghalaya. By order dated 25.1.2006 a direction was issued to issue notices as required under Rule 5(2) of the Commission of Inquiry (Central) Rules, 1972 (hereinafter referred to as the Rules) to every person, to furnish a statement to the Commission relating to the incident of police firing occurred on 30th September, 2005 at Tura and also to issue a notification to be published in local dailies having wide circulation in the State of Meghalaya inviting all persons acquainted with the subject-matter of the inquiry to furnish a statement to the Commission relating to such matter as notified in the notification. Accordingly such notices and notification were issued. Sri P. Sampat Kumar, Deputy Commissioner, West Garo Hills District, Tura, thereafter on 25.2.2006 submitted the memorandum on affidavit on behalf of the district authorities of West Garo Hills District before the Commission relating to the incident of the police firing. By 25th of February, 2006 apart from the memorandum on affidavit filed on behalf of the district authorities, 20 other memorandums on affidavit were filed by other persons.

3. The Commission in its proceeding dated 28.2.2006 finalised the regulation of procedure to be adopted by it and communicated to the parties. By the said order the district administration was directed to file examination-in-chief supported by affidavit by 7.3.2006, as per the regulation of procedure adopted by it and further observing that the cross-examination of the witnesses of the administration shall continue on a day-to-day basis till 17.3.2006. By another order dated 28.2.2006

the Commission upon perusal of the statements submitted by the parties and keeping in mind the nature of allegations made in the statement of case as well as on examination of the materials on record made available to the commission including notification dated 3.1.2006, passed an order directing issuance of notice under Section 8B of the Act to four government officials, namely, (1) Smt. Lutherin R. Sangma, the then Deputy Commissioner, Tura (ii) Smt. S.N. Marak, ADM, West Garo Hills District, Tura (iii) Sri Raksin P. Marak, ADM, West Garo Hills District, Tura (writ petitioner in W.P(C) No. 2715 of 2006) (iv) Sri D.P. Marak, Additional S.P. Tura affording reasonable opportunity to those persons of being heard in the inquiry and to produce evidence in their defence. Accordingly such notices under Section 813 of the Act were issued to those persons.

4. An application on behalf of the District authorities was filed before the Commission on 3.3.2006 with a prayer to recall/modify the order dated 28.2.2006 directing the district administration to lead evidences at the first instance and to direct the public memorialist and other witnesses to lead their evidence first and to permit the administration and its official to lead evidence at the end. The Commission, vide order dated 4.3.2006 disposed of the said application filed on behalf of the District authorities by observing that the persons to whom the notices under Section 8B of the Act have been issued would naturally be examined at the end of the inquiry and further directing the district administration to file the examination-in-chief, in the form of affidavit, by 7.3.2006 and also direct the memorialist to file the examination-in-chief in the form of affidavit, if any, on or before 8.3.2006. The said orders dated 28.2.2006 and 4.3.2006 passed by the Commission is under challenge in W.P.(C) No. 46(SH) of 2006, which has been renumbered as W.P(C) No. 2232 of 2006 (hereinafter referred to as 'First writ petition') on being transferred to the Principal Seat at Guwahati, apart from seeking a further direction to the Commission to record evidence of public memorialist and all other witnesses at the first instance and to permit the district authorities and its officials to lead evidence at the end, i.e., after the cross-examinations of all the other witnesses.

5. A Single Judge of this court in the said First writ petition filed by the District Administration, Tura through the Deputy Commissioner, West Garo Hills District,

while refusing to stay the further proceeding before the Commission, issued an interim direction to the effect that - 'the Commission may proceed with the recording of evidence other than the writ petitioner, officials under the petitioner and on behalf of the petitioner'. The said order has been challenged by the Commission in Writ Appeal No. 89 of 2006.

6. The District authorities on 18.4.2006 filed an application seeking modification/clarification of the order dated 5.4.2006, whereby and whereunder the district administration was directed to file the affidavits, with a prayer not to treat such affidavit as examination-in-chief and also to exempt the District administration from filing affidavit of any of its witnesses till order on such application for clarification/modification is passed. Sri P.P. Marak, Additional District Magistrate writ petitioner in W.P(C) No. 2715 of 2006 also filed an application on 24.4.2006 seeking modification of two orders, dated 13.3.2006 and 5.4.2006, passed by the Commission whereby the District administration was directed to submit the examination-in-chief of the witnesses of the Administration by way of affidavits, other than the person to whom the notices under Section 8B of the Act were issued, stating, inter alia, that the 14 witnesses listed by, the District administration in its statement of facts submitted before the Commission, most of whom were present on the spot on the date of incident, are his witnesses in defence, whose deposition may be of vital relevance of the case of the applicant and as such any direction to those witnesses to lead their evidence prior to the evidence of public memorialist may lead to pre-disclosure of the defence of the applicant and may materially prejudice him in his defence, which is contrary to the rights available to the applicant under Section 8B of the Act. However, said applicant, namely, R.P. Marak, who is writ petitioner in the said writ petition did not object to the issuance of the notice under Section 8B of the Act by the Commission.

7. A further application was filed on behalf of the administration on 24.6.2006 with a prayer not to insist for filing of affidavit by the witnesses/officials mentioned in the list of witnesses filed on behalf of the District Administration at the first instance and also not to subject them to cross examination at the threshold, with a further prayer to examine the public memorialist first and to examine the witnesses of

District administration thereafter. The Commission by the order dated 3.5.2006 disposed of the application dated 18.4.2006 filed on behalf of the District authorities by holding that the no modification/clarification of the order dated 5.4.2006 is required as the said order was passed as agreed to by the learned senior counsel appearing on behalf of the District administration. By another order dated 3.5.2006 the Commission upon examination at the materials available till date decided to issue notices under Section 8B of the Act to four more government officials, namely, Sri O. Pasi, MPS, Sri A.C. Marak, MCS, Sri C.N. Sangma, MCS and Smt. S.B. Marak, MCS apart from issuance of such notices to other seven non-officials, by observing that in the course of inquiry if materials surface against any other individuals, requiring the Commission to comment upon the conduct or reputation of such person(s), necessary orders will be passed accordingly. The Commission by the said order maintains its earlier order dated 5.4.2006 requiring the District administration to submit the affidavit of all its witnesses as per list and has observed that the memorialist had already submitted their affidavit. By the said order the learned Commission has refused to give the protection under Section 8B of the Act to their witnesses. The writ petitioner, namely, Sri. R.P. Marak, Additional District Magistrate, West Garo Hills District in W.P(C) No. 2715 of 2006 (hereinafter referred as 'Second writ petition') has challenged the 'show cause notice' dated 1.3.2006 issued to him under Section 8B of the Act as well as aforesaid order dated 3.5.2006.

8. We have heard Mr. K.T.S. Tulsi, learned senior counsel appearing on behalf of the writ petitioner in both the writ petitions as well as on behalf of the respondent No. 1 in writ appeal No. 89 of 2006 and Mr. N. Dutta, learned senior counsel appearing on behalf of the appellant in the said writ appeal, who also appears on behalf of the respondent No. 1 in both the writ petitions. None appears on behalf of other respondents in the writ appeal as well as in the writ petitions despite service of notice. The learned senior counsel for the Commission has also produced the relevant records before this court for perusal.

9. Mr. Tulsi, learned senior counsel appearing on behalf of the writ petitioners challenging the orders dated 28.2.2006, 4.3.2006 and 3.5.2006, in so far as it relates to the direction issued by the Commission directing the District

administration to adduce the evidence and to file affidavit as examination-in-chief of the witnesses, has submitted that the commission cannot compel the District administration as well as the petitioner in the 'second writ petition', who has been issued with a notice under Section 8B of the Act, to examine witnesses, at the first instance, which they propose to examine in their defence, as Section 8B envisages, apart from giving a reasonable opportunity of being heard in the inquiry to such noticees, also to produce evidence in his defence. According to the learned senior counsel if the witnesses, which such noticees proposed as defence witnesses, are directed to be examined, before examination of the other witness on behalf of the memorialist, it will amount to pre-disclosure of the defence of such noticees, thereby denying the protection given in Section 8B of the Act.

10. It has further been contended by the learned senior counsel that in fact the District Administration has submitted the list, along with the statement of facts submitted by it, containing the names of the 14 persons as witnesses on behalf of the District Administration and the terms of reference stipulated in the notification dated 3.1.2006 constituting the Commission being related to the incident of police firing occurred on 30th September, 2005, the District Administration is more or less in the position of an accused, therefore, the witnesses which the District Administration proposes to examine in support of its stand cannot be directed to be examined first, as it will amount to disclosure of the defence and giving an opportunity to the public memorialist to re-design or refashion its stand before the Commission thereby causing prejudice to the District administration.

11. Challenging the notice dated 1.3.2006 issued against the petitioner in the second writ petition, the learned senior counsel has submitted that as the position of the noticee under Section 8B of the Act is more or like of an accused, he has a right to know about the materials appearing against him, on the basis of which the Commission has decided to issue notice under the said provision of law. According to the learned Counsel the notice issued under Section 8B or the order passed for issuance of such notice must disclose the reason for issuance of such notice and also the materials available on record on the basis of which the satisfaction has been recorded by the Commission for issuance of such notice. But in the instant case, according to the learned senior counsel, there is absolutely no

reason recorded by the Commission on the basis of which such notice was issued to the writ petitioner in the second writ petition. It has further been submitted by the learned senior counsel that the entire action on the part of the Commission in issuing the notice is palpably arbitrary and discriminatory in nature as the notices have been directed to be issued without any materials available before it and by selecting some officials for such notices under Section 8B of the Act out of a homogenous group of officials under the District administration of West Garo Hills District, thereby treating similarly placed persons differently.

12. Referring to the order dated 3.5.2006 passed by the Commission, the learned senior counsel has further submitted that it is apparent from the said order that the Commission has ordered issuance of notice to the some of the public memorialist, which is unheard of, as according to the learned Counsel, no protection under Section 8B of the Act can be given to such private individuals. In so far as it relates to the Writ Appeal No. 89 of 2006, the learned senior counsel appearing on behalf of the respondent-District administration has contended that the order impugned in the said writ appeal, i.e., order dated 10.3.2006 being an interlocutory order, the appellant cannot maintain a writ appeal against such order without first filing an application for modification/ cancellation/vacation of such order before the learned Single Judge, which has not been done in the instant case.

13. The learned senior counsel in support of his contention that the District administration and its witnesses as well as the witnesses of the writ petitioner in the second writ petition are required to be examined after the examination and cross-examination of the memorialist and other witnesses, has placed reliance on the decision of the Apex Court in Smt. Kiran Bedi v. Committee of Inquiry and Anr. reported in : 1989 CriLJ903 . The reliance has also been placed on the judgment passed by the Apex Court in New Kenilworth Hotel (P.) Ltd. v. Orissa State Finance Corporation and Ors. reported in : [1997]1SCR395 ; in State of U.P v. State of Nagaland and Ors. reported in : (1998)1SCC640 ; in Manubhai J. Patel and Anr. v. Bank of Baroda and Ors. reported in : (2000)10SCC253 and in Central Mine Planning and Design Institute Ltd. v. Union of India and Anr. : (2001)ILLJ 1069 SC , by the learned senior counsel in support of his contention relating to the maintainability of the writ appeal against an interlocutory order. Mr. Tulsi, the

learned senior counsel in support of the contention that the Section 8B notices are to be informed about the materials on the basis of which the Commission formed its opinion for issuance of such notice and non-furnishing of such materials will make such notices invalid, has placed reliance on the decision of the Apex Court in *The Manager, Government Branch Press and Anr. v. D.B. Beliappa* reported in : (1979)ILLJ156SC ; in *Kumaon Mandal Vikas Nigam, Ltd. v. Girja Shankar Pant and Ors.* reported in (2001) 1 SCC 182 ; in *Food Corporation of India v. State of Punjab and Ors.* reported in (2001) 1 SCC 291 and in *Tarlochan Dev Sharma v. State of Punjab and Ors.* reported in : [2001]3SCR1146 .

14. Mr. Dutta, learned senior counsel appearing on behalf of the Commission, in both the writ petitions as well as in the writ appeal, has contended that in view of the agreed order dated 25.4.2006 passed in the writ appeal for taking up the first writ petition for final hearing on merit, the question of maintainability of the writ appeal need not be gone into, as the writ petition itself has been decided to be heard and disposed of by the Division Bench, as agreed to by the learned senior counsel appearing on behalf of the writ petitioners in both the writ petition.

15. Countering the submissions of the learned senior counsel for the writ petitioners relating to the supply of materials to the Section 8B noticees as well as giving reasons in the order directing issuance of such notices, the learned senior counsel for the Commission has submitted that it is evident from the order dated 18.2.2006 passed by the Commission that upon perusal of the memorandums on affidavit submitted by different memorialist as well as the memorandum on affidavit submitted by the District Administration on 25.2.2006, the Commission considers it necessary and formed its opinion that the conduct and/or reputation of the four officials including writ petitioner in the second writ petition may be required to be commented upon in its report and, therefore, the statutory protection available to such persons was directed to be given, thereby giving a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence, so that such persons are being heard before making any comment on their conduct and/or reputation. Mr. Dutta, has further submitted that it is not that the Commission has come to the finding that the conduct and/of reputation of such person have to be commended upon but as the Commission upon perusal of the materials, available

on record forms an opinion that the occasion may arise to make comment on their reputation and/or conduct, such statutory protection have been given to those persons to defend themselves and, therefore, the learned Commission has formed its opinion as regards the possibility of commenting upon the conduct and/or reputation of such persons, in respect of the terms of reference.

16. Mr. Dutta, has further contended that it is not that on 28.2.2006 no materials were available before the Commission requiring it to form an opinion regarding the possibility of prejudicially effecting the conduct and/or reputation of the persons to whom the protection under Section 8B is given. On that date the memorandum on affidavit filed by the District administration dated 25.2.2006 apart from memorandums on affidavit filed by other 20 memorialists were on record and also the other materials available on record as reflected in the order dated 28.2.2006 itself. It has further been submitted that mere issuance of notice under Section 8B of the Act cannot be treated to be an accusation against the person to whom such notices have been issued and it is only a statutory protection available to a person which gives such person a reasonable opportunity of being heard and to produce evidence in his defence, which is in fact the part of the principle of natural justice. According to the learned Counsel the Commission constituted under the provisions of the Act there is neither any accuser nor any accused and the position of a noticee under Section 8B of the Act cannot, therefore, be treated to be as that of an accused in a criminal case requiring formulation of charges and furnishing of such charges to such persons. The Commission being a fact finding body, it has to adopt a fair procedure by giving protection to the person who deserves such protection under Section 8B of the Act, it has further been submitted that Section 8B of the Act being only a protection given to the persons, who are entitled to such protection, it is not required that whatever materials is available on record, on the basis of which the order for giving such protection has been passed, are to be supplied to such noticee.

17. Mr. Dutta, learned senior counsel has further submitted that, the District administration as well as writ petitioner in the second writ petition having appeared in the inquiry conducted by the learned Commission, they could have very well ask for the documents/materials from the Commission, which they have not done. It

has further been submitted that Section 8B noticees being required to be examined last, they, in course of the inquiry will know the materials, if any, more comes out against them, on the basis of which the Commission may ultimately be required to comment, in its report, affecting the conduct and/or reputation of such person. It has further been contended that the writ petitioner in the second writ petition even after appearing before the Commission, neither in the application dated 26.4.2006 nor on any date thereafter objected the order dated 28.2.2006 giving protection of Section 8B of the Act. Mr. Dutta, referring to the prayer made in the second writ petition in so far as it relates to the prayer for quashing the 'show cause notice' dated 1.3.2006, has contended that notice under Section 8B is not a show cause notice but a statutory protection given to a person deserving such protection.

18. Regarding the contention of the learned senior counsel for the writ petitioners relating to the examination of the witnesses of the Section 8B notices, after cross-examination of the public memorialist and other witnesses, Mr. Dutta has submitted that the protection available to the notices under Section 8B of the Act may also be available to their witnesses. According to the learned senior counsel the writ petitioner in second writ petition in the application dated 26.4.2006 filed before the Commission has stated that 14 witnesses named by the District administration in list enclosed to its statements of facts, are his witnesses in defence and, therefore, the Commission will examine those witnesses after the cross-examinations of the memorialist and other witnesses, subject of course to the order that may be passed by the Commission relating to the order of examination of Section 8B noticees and their witnesses. Mr. Dutta, however, contended that the District Administration has to examine first all its witnesses, except the persons, whom the writ petitioner in second writ petition claims to be his witnesses, as required under the 1972 Rules.

19. This court vide order dated 25.4.2006, passed in Writ Appeal No. 89 of 2006, as agreed to by the learned senior counsel appearing on behalf of the appellant as well as the District administration decided to take the first the writ petition itself for hearing and disposal, for which the said writ petition has been withdrawn for its hearing by the Division Bench. That being the position there is no necessity of

dealing with the question of maintainability of the writ appeal, against, the interim order passed by the learned Single Judge, as the main writ petition has been taken up for hearing and disposal. Hence the question of maintainability of the writ appeal has not been gone into in the present case and consequently the decision of the Apex Court in *Central Mine Planning and Design Institute Ltd.; State of U.P. v. State of Nagaland; Manubhai, J. Patel and New Kenilworth Hotel (P.) Ltd.* (supra) cited by the learned senior counsel for the-writ petitioners need not be discussed.

20. Sub-section (1) of the Section 3 of the Act empowers the appropriate Government, to appoint a Commission of Inquiry, by issuing notification in the official Gazette, if it forms an opinion that it is necessary so to do, for the purpose of making an inquiry into the definite matter of public interest and performing such function and within such time as may be satisfied in such notification. The Commission appointed as such is required to make an inquiry and perform the function accordingly in terms of the terms of reference contained in such notification. A notification dated 3.1.2006, as discussed above, has been issued by the Government of Meghalaya to inquire into the all aspects and circumstances of events leading to the incident, of police firing occurred on 30th September, 2005 at Tura in West Garo Hills District, resulting in the death of four persons besides causing injury to a large number of civilian and police personnel. Terms of reference of such inquiry have also been fixed by such notification.

21. Sub-section (4) of Section 3 of the Act requires the appropriate Government to lay before each house of Parliament or, as the ease may be, the Legislature of the State, the report, if any, of the Commission, on the inquiry made by it together with a memorandum of the action taken there on, within a period of six months of the submission of the report by the Commission to the appropriate Government. Section 4 provides that the Commission shall have the powers of a civil court while trying a suit under the Code of Civil Procedure in respect of summoning and enforcing the attendance of any person from any part of India and examining him on oath requiring the discovery and production of any document, receiving evidence on affidavits ; requisitioning any public record or copy thereof from any court or office, issuing commissions for the examination of witnesses or

documents and any other matter which may be prescribed. Section 5 empowers the appropriate Government to direct that the provisions of Sub-section (2), (3), (4) or (5) of that section shall apply to the Commission, provided that the appropriate Government is of the opinion, having regard to the nature of inquiry to be made and other circumstances of the case, that all or any of such provision should be made applicable to the Commission. Section 5A empowers the Commission to utilize the services of certain officers and investigation agencies for conducting investigation pertaining to inquiry. The Commission has also the power to appoint assessors under Section 8B of the Act.

22. It is evident from the different provisions of the Act and the object for which the act has been enacted, that a Commission appointed by the appropriate Government under the Act is a fact finding body. Such Commission does not decide any dispute but gives its opinion about the matter under reference to the appropriate Government, which again may or may not be accepted by such Government. In the inquiry by a Commission appointed under the provisions of the Act, there is neither an accuser nor an accused. The whole purpose of constitution of a Commission is to inquire into the matter of definite public importance, to gather the facts and submit the report before the appropriate Government with its opinion on the terms of reference for the purpose of taking future action which includes the remedial measures to be taken by such appropriate Government. The Commission under the provisions of Act is not required to adjudicate upon the rights of the parties and has no adjudicatory function.

23. Section 8 of the Act empowers the Commission to regulate its own procedure, subject to any rules that may be made in that behalf. As discussed above, Commission by virtue of the said power framed the regulation to regulate its own procedure. The Central Government also in exercise of the power conferred by Section 12 of the Act has framed the 1972 Rules, to carry out the purpose of the Act. The present writ petition relates to the rights of the person to whom the protection under Section 8B of the Act has been given. The dispute in the present writ petitions being relating to the said provision, i.e., Section 8B, for better appreciation Sections 8B and 8C of the Act are quoted below:

8B. Persons likely to be prejudicially affected to be heard. - If, at any stage of the inquiry, the Commission, -

(a) considers it necessary to inquire into the conduct of any person ; or

(b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of witness is being impeached.

8C. Right of cross-examination and representation by legal practitioner. - The appropriate Government, every person referred, to in Section 8B and with the permission of the Commission, any other person whose evidence is recorded by the Commission, -

(a) may cross-examine a witness other than a witness produced by it or him ;

(b) may address the Commission ; and

(c) may be represented before the Commission by a legal practitioner or, with the permission of the Commission, by any other person.

24. Section 8B of the Act confers a statutory protection to such person whose conduct and/or reputation, the Commission considers or of the opinion that, is likely to be prejudicially affected by the inquiry such person under the said provision of law has to be afforded a reasonable opportunity of being heard, in the inquiry and to produce evidence in defence. The said provision along with Sections 8A and 8C are incorporated in the Act by Act 79 of 1971, with the object of giving every such person the reasonable opportunity of being heard in the inquiry and to produce evidence in his defence, that is to say to comply with the principle of natural justice, before commenting upon his conduct and/or reputation by the Commission in its report. The principle underlying such provision is that no person should be condemned unheard.

25. The contention of the petitioner in the second writ petition is that non-disclosure of materials in the notice issued under Section 8B of the Act amounts to violation of principle of natural justice as the proceeding before the Commission being a quasi-judicial proceeding, such person is in the status of an accused, therefore, the notice issued under Section 8B without disclosing therein, the materials on the basis of which such opinion has been formed by the Commission, is bad in law being contrary to the provision of law as well as the principles of natural justice.

26. In *Manager, Government Branch Press and Anr. (supra)*, the Apex Court has held that where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of service, it is the duty of the authority to dispel that charge by disclosing to the court the reason or motive which impelled it to take the impugned action. It has further been observed that excepting, perhaps, in cases analogous to those covered by Article 311(2), proviso (c), the authority cannot withhold such information from the court on the lame excuse that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of the service. The Apex Court in the said case in view of the fact that no special circumstances or reason has been disclosed which would justify discriminatory treatment to the respondents therein, as a class apart from his juniors, who have been retained in service, has held that the termination of the service of the respondents therein was made arbitrarily and not on the ground of unsuitability or other reason, which would warrant discriminatory treatment to him as a class apart from others in the same cadre.

27. The Apex Court in *Kumaon Mandal Vikas Nigam Ltd. (supra)* has held that the doctrine of natural justice cannot be put in a strait jacket formula but the compliance with the doctrine is solely dependent upon the facts and circumstances of each case, so also the totality of the situation and if it comes to light that the executive action suffers from vice of non-compliance with the doctrine, the law courts ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. The Apex

Court while dealing with the departmental proceeding has observed that it is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. It has further been observed that the judicial process itself embraces a fair and reasonable opportunity to defend, however, the same depends upon the facts and circumstances of the each individual case.

28. In *Tarlochan Dev Sharma (supra)* the Apex Court while dealing with the provision of Section 22, more particularly, second proviso thereto of Punjab Municipal Act, 1911, regarding power of removal of the President of Municipal Council, has held that the show cause notice requires to be issued before removing the President must contain the reason for the proposed removal, as required under second proviso to Section 22, as the person proceeded against under Section 22 of the Act has to be made aware of the precise allegations which he requires to meet.

29. The Apex Court in *Food Corporation of India (supra)* while considering the provision of Section 67 of Punjab Municipal Act, 1911 has held that as the said provision requires to specify the circumstances in and the grounds on which amendment of the assessment list is proposed, giving such person not less than a month time to tender objection, if any, such notice cannot be a vague and unspecific notice, as in that notice it would deprive such noticee to file objection meeting the reasons/grounds on which the amendment of assessment list is proposed to be made.

30. Section 8B of the Act does not contemplate issuance of any notice. It requires the Commission to afford reasonable opportunity of being heard and to adduce evidence, to such person whose, the Commission considers of the opinion that, conduct and/or reputation may be required to be commented upon in the report to be submitted to the appropriate Government. Any communication issued by the Commission intimating such person giving such protection is neither a 'show cause notice' as contended by the writ petitioner in the second writ petition nor a charge sheet. But at the same time the Commission before giving such statutory

protection to a person is required to form a prima facie opinion on the basis of the materials available on record.

31. In the instant case it appears from the records produced before this court that apart from the memorandum submitted on behalf of the District Authorities supported an affidavit by Mr. P. Sampat Kumar, the Deputy Commissioner of West Garo Hills District, there were 20 other memorandums on affidavit filed by different memorialist on 28.2.2006, when the Commission passed an order considering/forming an opinion that the conduct and/or reputation of the writ petitioner in the second writ petition may be required to be commented upon in the report and as such given the protection of Section 8B of the Act.

32. Neither Section 8B of the Act nor any other provision of the said Act requires to disclose the materials available on the record of the Commission, on the basis of which the Commission considers it necessary to give the protection under Section 8B of the Act, in the intimation given to such person about giving such protection as discussed above. No notice in fact is required to be issued under Section 8B. What requires to be provided is an opportunity of being heard in the inquiry, which includes the examination of its witnesses in defence. Therefore, non-disclosure of the ground or the particulars of materials available on record of the Commission, which is the basis for giving such protection will not vitiate the order passed by the Commission, because of the right available to such person to inspect records and or to get the copy of the materials from the Commission. As held above Section 8B of the Act only contemplates a protection and not accusation.

33. It appears from the notice dated 1.3.2006 issued by the Commission giving protection under Section 8B of the Act that it does not disclose the grounds or satisfaction on which the Commission considers/forms an opinion on the aspects as contemplated in Clauses (a) and (b) of Section 8B of the Act. Such notice also does not set out particulars of any materials which were available on the record of the Commission and on the basis of which the Commission has considered/formed an opinion that it is necessary to inquire into the conduct of the writ petitioner in the second writ petition or is of opinion that his reputation is likely to be prejudicially affected by the inquiry. But the order dated 28.2.2006, on

the basis of which the consequential notice was issued discloses that the Commission before giving such protection had in its record different memorandums on affidavit and other materials available. This court in exercise of the power under Article 226 of the Constitution of India normally do not enter into the dispute relating to the sufficiency or otherwise of the materials available on record of the Commission for giving such protection. It is for the person, to whom such protection is given, to approach the learned Commission requesting it to supply those materials as he has a statutory right to protect his conduct and reputation, on which the Commission may be required to comment upon in its report. What has been done by the Commission is giving such protection, as the Commission prima facie of the view that the conduct and/or reputation of the writ petitioner may required to be commented upon in its report. The Commission has not in fact formed a final opinion that it will comment on the conduct or reputation of the writ petitioner or the other persons to whom the protection under Section 8B has been given. Naturally all opportunities have to be given to such persons to defend themselves in the said inquiry.

34. No doubt when such statutory protection under Section 8B of the Act is given, such person has a right to know what are the materials against him on the basis of which the Commission may ultimately be required to comment on his conduct and/or reputation in its report to be submitted before the appropriate Government. But can it be said that non-furnishing of materials or non-discloser of such grounds in the notice, even it is statutorily required, will render such notice under Section 8B invalid, unless prejudice caused is shown. The answer, in our opinion is in negative. The person who complains about such non-furnishing of materials in the notice and/or non-discloser of grounds in such notice, must demonstrate the prejudice caused to him for such non-supply/non-discloser. Person to whom such protection under Section 8B of the Act has been given, can approach the Commission for supply of the materials available on record. Such person during the course of the proceeding of inquiry before the Commission will also know what more materials, if any, appearing before the Commission against him, which may adversely affect his conduct and/or reputation. Such person will also have the right under Section 8C of the Act to cross-examine, the witnesses other than the witnesses produced by him and also to address the Commission. The writ

petitioner in second writ petition in fact upon receipt of the information regarding the protection given under Section 8B of the Act, has appeared before the Commission and participated in the proceeding without objecting giving such protection.

35. In the instant case the writ petitioner, in the second writ petition, in the application dated 24.4.2006 neither challenged the decision to give the protection under Section 8B nor requested the Commission to supply the materials available to it, on the basis of which such order giving such protection under Section 8B has been passed. In the said application the said writ petitioner has only prayed for allowing his witnesses to be examined at the last after the cross-examinations of the memorialist and other witnesses are over. The writ petitioner in the second writ petition could have very well approach the learned Commission to supply the materials available before it, which necessitated the Commission to pass the order giving protection under Section 8B of the Act. It is always open to the petitioner as well as other persons to whom the protection under Section 8B of the Act is given, to approach the learned Commission to supply the materials available before it, at any time of the inquiry and the Commission in that case is duty bound to supply such materials. However, if the records are voluminous, the Commission may in appropriate case, instead of supplying the copy of such materials, allow such person to inspect such materials and to take note of the same. Such course of action will satisfy the principle of natural justice and in that case such person cannot raise, a dispute that the reasonable opportunity of being heard has not been afforded to him. In the instant case for the aforesaid reasons no prejudice has been caused to the petitioner in the second writ petition.

36. The contention of the writ petitioner in the first writ petition that as, from the reading of the terms of reference contained in the notification dated 3.1.2006 constituting the Commission, it appears that the allegation is against the District administration, it cannot be asked to adduce evidence at the beginning and they are to be called upon to lead evidence after the cross-examinations of the public memorialist and other witnesses are over. The said contention cannot be accepted in view of the fact that the District administration as such cannot get protection under Section 8B of the Act. It is some of the officials who may get such statutory

protection under the Act. Further Rule 5(5)(a) of the 1972 Rules requires the Commission to first record the evidence of the Government and thereafter record the evidence in such order as it may deem fit, of any person who has furnished the statement under Clause (a) of Sub-rule (2) of Rule 5 and the evidence of any person whose evidence, in the opinion of the Commission, is relevant to the inquiry. The Apex Court in Kiran Bedi's case has also directed the Delhi administration to examine first all its witnesses as required by Rule 5(5)(a) of the 1972 Rules. Therefore, the Commission has to first record the evidence, if any, of the District Administration. The Commission for that matter may also call upon any person to give evidence which in the opinion of the Commission is relevant to the inquiry. However, such examination is subject to the protection envisaged under Section 8B of the Act.

37. The contention of the learned senior counsel for the writ petitioners that the action on the part of the learned Commission in issuing the notice under Section 8B to certain officials only without giving such protection to other persons involved in the activities of the District administration is discriminatory, also cannot be accepted for the simple reason that the protection under Section 8B cannot be given to each and every officials unless the Commission considers/forms an opinion that the conduct of such person may be necessary to be inquired into and/or reputation is likely to be prejudicially affected by the inquiry. It is for the Commission to satisfy itself whether such protection is to be given to any person, on the basis of the materials available on record and cannot do so mechanically.

38. The further contention of the learned senior counsel for petitioners that no protection under Section 8B can be given to the public memorialist, cannot also be accepted for the same reason that the protection under Section 8B of the Act has to be given by the Commission to such person whose conduct, the Commission considers it necessary to enquire into and/or whose reputation is likely to be prejudicially affected by the inquiry. Such person may be Government Officials and may be the public memorialist, as it is evident from the terms of reference contained in the notification dated 3.1.2006 constituting Commission that the Commission has been constituted also to determine the developments during the period preceding the proposed rally at Tura to protest against State Government's

acceptance of the report of the State Level Committee on Meghalaya, Board of Secondary Education and the Meghalaya, Board of Secondary Education (Amendment) Ordinance, 2005 as well as to cause a detailed inquiry into all aspects and circumstances of events leading to the incident of the police firing occurred on 30th September, 2005.

39. Another issue which requires our consideration is whether in view of the protection contained in Section 8B of the Act, the witnesses to be examined by the person to whom such protection has been given, are to be examined after the cross-examinations of the other public memorialists and witnesses are over. In other words whether direction to examine the witnesses of the District administration listed in the list of witnesses, which are also the witnesses of the writ petitioner in the second writ petition, is contrary to the provision of Section 8B of the Act and violative of the principles of natural justice.

40. As discussed above, Section 8B of the Act provides a statutory protection to such persons whose conduct, the Commission considers it necessary to inquire into and/or whose reputation in the opinion of the Commission is likely to be prejudicially affected by an inquiry. Section 8B also confers a right to such person to produce evidence in his defence. The protection given by Section 8B is in compliance of the principle of natural justice, which cannot be an empty formality. The purpose for which Section 8B has been incorporated in the Act will be defeated if the witnesses of such person to whom such protection under Section 8B has been given, are, asked to examine first, as in that case it will amount to denying the opportunity to such person to produce evidence in his defence, because if those witnesses are examined first, then he will have no other witness to adduce in his defence, thereby leaving him in a situation when he cannot defend himself. Such an action would amount to violation of the statutory protection given under Section 8B of the Act as well as would be against the principle of natural justice.

41. The Apex Court in Kiran Bedi's case has held that - '....Not only that calling upon a person governed by Section 8B to produce evidence in this defence at the very inception of the inquiry is a contradiction in terms inasmuch as in this situation

such a person would really be required to disprove statements prejudicial to him of such witnesses who are yet to be examined, it would also reduce the right of cross examination by such person to a mere formality for the obvious reason that by the time the witnesses who are to be cross-examined are produced, the defence of such person which would normally constitute the basis for the line and object of cross-examination would already be known to such witnesses and they are likely to refashion their statements accordingly.' Denial of such opportunity to examine his witnesses in defence at the last, who may also be the witnesses of the District Administration, will amount to violation of the protection given in Section 8B of the Act, and also the principle of natural justice. The learned senior counsel for the Commission, in fact, as discussed above has also fairly submitted that those witnesses cannot be called upon to adduce evidence at the initial stage of the inquiry, i.e., before examination of public memorialist and other witnesses. However, it is open to the Commission to decide about the order of recording the evidence of persons to whom protection under Section 8B of the Act has been given and their witnesses, but the same have to be after recording of evidence of other public memorialists and other witnesses.

42. In view of the aforesaid discussion the prayer for setting aside the notice issued by the Commission to the petitioner in the second writ petition under Section 8B of the Act is rejected. The orders of the Commission dated 28.2.2006, 4.3.2006 and 3.5.2006 in so far it relates to the direction to examine the witnesses of Section 8B noticees at the beginning, are set aside. However, keeping in view the facts and circumstances of the case as well as the discussions made above, we issue the following directions:

(I) The District administration of West Garo Hills District, Tura, has to examine first all its witnesses as required by Rule 5(5)(a) of the Central Rules, excluding its witnesses who has/have been cited as witness by any person to whom the protection under Section 8B of the Act is given. Such witnesses falling under Section 8B of the Act are to be examined after the examination of the other public memorialists and other witnesses.

(II) It is open for the Commission to decide about the order in which such persons, to whom protection under Section 8B of the Act has been given as well as their witnesses are to be examined, subject to the direction No. (I) made above.

(III) The question whether a party has the right, of cross-examination or not shall be decided by the Commission in accordance with the provision of the Section 8C of the Act.

(IV) It is open to the Commission, if, at any stage of the inquiry, it considers necessary to inquire into the conduct of any person and/ or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, to pass necessary order on the basis of materials available on record, giving such protection under Section 8B to such person.

(V) In case, any person, to whom the protection under Section 8B of the Act is made available by the Commission, files any application requesting the Commission to supply particulars or materials and copies thereof, those shall be made available to such person so that they get sufficient opportunity to defend themselves and to rebut that the materials available before the Commission do not require making any comment regarding his conduct and/or reputation in its report. In case any particular record being voluminous, copy of which in the opinion of the Commission may not be possible to furnish to such person, who are given the protection under Section 8B of the Act, opportunity to inspect such document and to take extract therefrom must be given by the Commission to such person.

43. The writ petitions as well as the writ appeals are accordingly disposed of, with aforesaid directions.

44. No costs.