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**Court :** Delhi

**Decided On :** Jul-01-1996

**Reported in :** 70(1997)DLT671

**Judge :** Devinder Gupta and; M.K. Sharma, JJ.

**Acts :** [Constitution of India](#) - Article 226; Commission of Inquiry Act, 1952 - Sections 8B; Commission of Inquiry Rules, 1972 - Rule 5; Liberhan Ayodhya Commission of (Regulation of Procedure) Order, 1993 - Order 10

**Appeal No. :** Civil Writ Appeal No. 3062 of 1995

**Appellant :** Prabhat Kumar

**Respondent :** The Liberhan Ayodhya Commission of Inquiry and anr.

**Advocate for Pet/Ap. :** Kapil Sibal,; D.V. Sehgal,; A. Haksar,;

**Judgement :**

**Devinder Gupta, J.**

(1) The petitions, six in number, raise a common question, which can conveniently be disposed of by a common judgment. Petitioners in each of the petitions have prayed for issuance of an appropriate writ, direction or order under Article 226 of the Constitution of India for setting aside the impugned order, Annexure F, dated 4.8.1995 passed by the Liberhan Ayodhya Commission of Inquiry (for short 'the

Commission') and for quashing of notice, Annexure C, dated 28.4.1995 issued under Section 8-B of the Commission of Inquiry Act, 1952 (Act No. 60 of 1952) (hereinafter referred to as 'the Act').

(2) The Central Government, in exercise of its powers under Sections of the Act, after forming an opinion that it was necessary to appoint a Commission for the purpose of making an inquiry into a definite matter of public importance, namely, destruction of Ram Janma Bhoomi-Babri Masjid Structure at Ayodhya (for short 'the Structure') on 6.12.1992, appointed Justice Shri Manmohan Singh Liberhan, a sitting Judge of High Court of Punjab & Haryana as one man Commission of Inquiry with respect to the matters mentioned in the notification dated 16:12.1992. The notification reads:

'MINISTRYOF Home Affairs Notification New Delhi, the 16th December, 1992 S.O. 913(E):-Whereas the Central Government is of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into a definite matter of public importance, namely, the destruction of the Ram Janma Bhoomi-Babri Masjid Structure at Ayodhya on 6th December, 1992. Now, therefore, in exercise of the powers conferred by Section 3 of the Commission of Inquiry Act, 1952 (60 of 1992) the Central Government thereby appoints a Commission of Inquiry of Justice Shri Manmohan Singh Liberhan, a sitting Judge of the High Court of Punjab and Havana.

2.The Commission shall make an inquiry with respect to the following matters: (a) Thesequenceofeventsleadingto,and all the facts and circumstances relating to, the occurrences in the Ram JanmaBhoomi-Babri Masjid complex at Ayodhya on 6th December, 1992 involving the destruction of the Ram Janma Bhoomi-Babri Masjid structure; (b) The role played by the Chief Minister, Members of the Council of Ministers, officials of the Government of Uttar Pradesh and by the individuals, concerned organizations and agencies in or in connection with, the destruction of the RamJanma Bhoomi-Babri Masjid structure; (e) The deficiencies in the security measures and other arrangements as prescribed or operated in practice by the Government of Uttar Pradesh which might have contributed to the events that took place in the Ram Janma Bhoomi-Babri Masjid complex, Ayodhya town and

Faizabad on 6th December, 1992; (d) The sequence of events leading to, and all the facts and circumstances relating to, the assault on media persons at Ayodhya on 6th December, 1992; and (e) Any other matters related to the subject of inquiry.

3.The Commission shall submit its report to the Central Government as soon as possible but not later than three months.

4.The Commission may, if it deems fit, make interim reports to the Central Government before the said date on any of the matters mentioned in paragraph 2 above.

5.The headquarters of the Commission shall be at Lucknow.

6.The Central Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of Sub-section (2), Sub-section (3), Sub-section (4) and Sub-section (5) of Sections of the Commissions of Inquiry Act, 1952 (60 of 1952), should be made applicable to the said Commission and the Central Government, in exercise of the powers conferred by Sub-section (1) of the said Section 5, hereby directs that all the provisions of the said Sub-sections (2), (3), (4) and (5) of that section shall apply to the Commission. [No. N-71013/27/92-AY-1] Madhav God Bole, Home Secy.'

(3) On 11th June, 1993 the Commission issued a notification under Clause (b) of Rule 5(2) of the Commission of Inquiry (Central) Rules, 1972 (hereinafter referred to as 'the Rules') calling upon persons acquainted or in know of facts, relating to subject matter of inquiry, information and also issued notices under Rule 5 of the Rules and with Order 10 of the Liberhan Ayodhya Commission of Inquiry (Regulation of Procedure) Order, 1993 (for short 'the Order') to certain individuals, calling upon them to furnish to the Commission the requisite information or facts relating to subject matter of inquiry; by way of affidavit(s) in accordance with the Order.

(4) In response to the notices and the notification, it is stated that several affidavits and documents were filed. Central Government thereafter adduced its evidence before the Commission by examining as many as 53 witnesses. On behalf of the

State of Uttar Pradesh it was stated that no further evidence is to be led by it. The Commission at that stage issued notices under Section 8-B of the Act to each of the petitioners, (the impugned notices, one of which is Annexure C), informing them that the Commission considers it necessary to inquire their conduct and is of the opinion that their reputation was likely to be prejudicially affected by the inquiry, in respect of the terms of reference mentioned in Sub-paras (a) to (e) thereof, therefore, a notice was being issued under Section 8-B of the Act with a view to provide them a reasonable opportunity of being heard in the inquiry and to enable them to produce evidence in their defense. Notices were informed that they were at liberty to inspect the material at any time during office hours at Headquarters of the Commission at New Delhi. They were also informed of the next date of hearing, for which date the notices were called upon to appear, either in person or through Counsel and state their case on affidavits and submit a list of witnesses and produce documents, if any, in support of their version. They were also informed that in case they would like to cross-examine any of the witness(es), already produced, they might give their names so that the witnesses might be called before the Commission for cross-examination. The notice, which is similarly worded in each case reads :

'WHERE AS the Central Government in exercise of powers conferred by Section 3 of the Commission of Inquiry Act, 1952 (hereinafter called 'the Act') has appointed vide Notification No. So 913(E) dated 16th December, 1992 a Commission of Inquiry consisting of Hon'ble Justice Shri Manmohan Singh Liberhan, for the purpose of making an inquiry into the destruction of Ram Janma Bhoomi-Babri Masjid Structure at Ayodhya on 6th December, 1992 and has asked to make an inquiry and submit report with respect to the following matters:

(A)The sequence of events leading to, and all the facts and circumstances relating the occurrences in the Ram Janma Bhoomi-Babri Masjid complex at Ayodhya on 6th December, 1992 involving the destruction of Ram Janma Bhoomi-Babri Masjid Masjid Structure;

(B)The role played by the Chief Minister, Members of the Council of Ministers, officials of the Government of Uttar Pradesh and by. the individuals, concerned

organisations and agencies in or in connection with, the destruction of the Ram Janma Bhoomi-Babri Masjid Structure;

(C)The deficiencies in the security measures and other arrangements as prescribed or operated in practice by the Government of Uttar Pradesh which might have contributed to the events that took place in the Ram Janma Bhoomi-Babri Masjid complex, Ayodhya town and Faizabad on 6th December, 1992.

(D)The sequence of events leading to, and all the facts and circumstances relating to, the assault on media persons at Ayodhya on 6th December, 1992.

(E)Any other matter related to the subject of inquiry.

2.And whereas the Commission had by Notification No. ACI/1(18)92-93 dated 11th June, 1993 under Clause (b) of Rule 5(2) of the Commission of Inquiry (Central) Rules, 1972 (hereinafter called 'the Rules') requisitioned informations from the persons acquainted or in know of facts relating to the subject matter of inquiry referred to above and the Commission issued notice under Rule 5 of the Rules read with Order 10 of the Liberhan Ayodhya Commission of Inquiry (Regulation of Procedure) Order, 1993 to certain individuals for furnishing to the Commission, the requisite information of facts relating to the subject matter of inquiry by way of affidavit in accordance with Liberhan Ayodhya Commission of Inquiry (Regulation of Procedure) Order, 1993.

3.And whereas in response to the Commission's notices, several affidavits and documents have been filed and Central Government has also produced its evidence.

4.And whereas upon a careful consideration of the material produced, the Commission considers it necessary to inquiry your conduct and is also of the opinion that your reputation is likely to be prejudicially affected by the inquiry, in respect of the aforesaid terms of reference mentioned at (a) to (e).

5.And now, therefore, you are hereby given a notice under Section 8-B of the Act to give you a reasonable opportunity of being heard in the inquiry and to produce evidence in your defense.

6. You are at liberty to inspect the aforesaid material at any time during office hours at the Headquarters of the Commission at Vigyan Bhawan Annexe, New Delhi.

7. Take notice that the next date of hearing fixed by the Commission at Vigyan Bhawan Annexe, New Delhi, is 26th May, 1995 on which you are called upon to be present before the Commission at 10.30 a.m. in response to the instant notice either in person or through Counsel to state your case on affidavit and submit a list of witnesses and produce documents, if any, in support of your version. In case you desire to cross-examine any witnesses already produced, you should give their names so that they may be called upon before the Commission for cross-examination by you.

8. Given under my hand and the seal of the Commission this 28th day of April, 1995'.

(5) On receipt of the notice, the petitioners moved separate applications requesting the Commission to make available to them the material/evidence with reference to the conduct of the petitioners, on the basis of which notice dated 28.4.1995 under Section 8-B of the Act had been issued. It was pleaded in the applications that the notice states that upon a careful consideration of the material produced, the Commission considered it necessary to inquire into the petitioners' conduct and that the Commission also is of the opinion that petitioners' reputation was likely to be prejudicially affected by the inquiry, in respect of the terms of the reference mentioned at Clauses (a) to (e), therefore, notice was being given to the petitioners to afford a reasonable opportunity of being heard in the inquiry and produce evidence in defense. It was alleged that the notice neither specifies the material, nor makes reference to any instance as regards petitioners' conduct, which in the opinion of the Commission was likely to prejudicially affect petitioners' reputation. Notice neither identified, nor disclosed the material or circumstances. It was necessary, in order to enable the applicant to adduce evidence in defense, to identify the material on the basis of which notice was based. Some of the petitioners, in support of their applications, also submitted written arguments that before the petitioners could be called upon to say anything in the matter, it was necessary to identify the material, on the basis of which the opinion, if any, had

been formed by the Commission that reputation of the petitioners was likely to be prejudicially affected. Failure to disclose the circumstances or non-identification of the material, which the petitioners had to meet would amount to denial of fair treatment and reasonable opportunity to defend the reputation and would be vocative of principles of natural justice.

(6) Through the impugned order, Annexure F, dated 4.8.1995 the Commission declined to disclose the material. The Commission in the impugned order observed that it was not essential that the same should be disclosed to the notices. Under the Commission's regulations or even otherwise, keeping in view the voluminous nature of the record it was not physically possible to supply copies of the material, apart from the fact that it was neither the requirement of the Act, nor of the rules, nor part of the principle of natural justice that the material should be supplied to the petitioners. The order also states that from the nature of inquiry, the material produced on record, in the absence of substantial law, supply of the material/ documents to the petitioners would result in administrative chaos, which instead of observing the principles of natural justice would result in violation of the same and render them nugatory. Petitioners were at liberty to make a request for supply to them of copies from record or were at liberty to carry out inspection, which opportunity had also been reserved to them in the notices. The impugned order further states that the Commission at this stage had not formed any definite opinion on the conduct of the petitioners or to the fact that reputation of the petitioners was likely to be prejudicially affected by any material. Commission was still at the stage of examining the material and before any conclusion could finally be arrived at, it was deemed fit and proper to give notice to some of the persons, whom it thought were at the helm of affairs at the relevant time. The inquiry is directed towards the events and circumstances leading to the demolition of the Structure. The role played by the State Government Officials, political leaders, organisations, individuals and promoters of the movement was directly involved. Since protection of the Structure was legal, moral and constitutional obligation, severally, jointly and collectively, of each one of those, who were at the helm of the affairs, as such, when the Commission is yet to come to a conclusion with respect to the role and functions played by the petitioners, it was thought necessary and proper to grant an opportunity to them to enable to put forward their version about

the matters under investigation and to afford them a right to cross-examine the witnesses produced before the Commission. Order states that notice had clearly stated that the petitioners' conduct was under inquiry and their reputation was likely to be adversely affected, if ultimately a conclusion is arrived at on the role played and functions performed by them. It is this order of the Commission and the aforementioned notice which are under challenge in these petitions by the petitioners.

(7) Petitioner Prabhat Kumar in Cw 3062/95 belongs to U.P. Cadre of Indian Administrative Service (for short IAS) and was working as the Principal Secretary to Government of Uttar Pradesh in the Home Department of Lucknow during July 23, 1991 to 22nd December, 1992 and thereafter was transferred to Government of India as Development Commissioner, Small Industries at New Delhi.

(8) Petitioner Shekhar Agarwal in Cw 3086/95 belongs to U.P. Cadre of IAS and was working as the Special Secretary to Government of Uttar Pradesh in the Home Department of Lucknow during the period July, 1990 to 22nd December, 1992 where after he was transferred as Secretary Finance, Government of Uttar Pradesh, Lucknow.

(9) Petitioner S.V.M. Tripathi in Cw 3258/95 is an I.P.S. Officer belonging to 1961 Batch (U.P. Cadre) and on 30.9.1992 was posted as Director General, U.P. Police when Ram Janma Bhoomi Babri Masjid dispute was already going on. He remained posted as Director General, U.P. Police, till 7.1.1993.

(10) S.P. Gaur, petitioner in Cw 3455/95 belongs to U.P. Cadre of IAS and was working as the Commissioner, Faizabad Division under the Government of Uttar Pradesh during the period 26th July, 1991 to December 7, 1992 and was transferred from there to U.P. Academy of Administration at Nainital, U.P. as Director. The disputed site, i.e., the Structure fell within the jurisdiction of Faizabad Division.

(11) Besides these Government Officials, the other petitioners are private individuals. Champat Rai Bansal, petitioner in Cw 3870/95, is the Joint Zonal Organiser Secretary of Vishwa Hindu Parishad.

(12) There are eleven petitioners in Cw 4137/95. All of them are members of Vishwa Hindu Parishad and they are: (i) Jai Bhagwan Paweiya; (ii) Ashok Singhal; (iii) Giriraj Kishore; (iv) Sadhvi Ritambara; (v) Swami Paramhans Ram Chander Dass; (vi) Mahant Avidya Nath; (vii) Laloo Singh; (viii) Vishnu Hari Dalmia; (ix) H.V. Shishadri; (x) M.N. Pingle; and (xi) R.S. Agnihotri.

(13) The challenge to the impugned notice is on the ground that it does not disclose any material on the basis of which the Commission might have come to the conclusion that it was necessary to inquire into petitioners' conduct and on the basis of which it formed an opinion that petitioners' reputation was likely to be prejudicially affected by the inquiry. Notice also did not provide any details whatsoever of any event or events, nor did it communicate, in any manner, the specific charges or allegations against each of the petitioners. It has been contended that for issuance of notice under Section 8-B of the Act by the Commission, during the course of inquiry, the existence of jurisdictional facts is a sine qua non, which are; that the Commission must consider it necessary to inquire into the conduct of a person; or the Commission should be of the opinion that the reputation of the concerned person was likely to be prejudicially affected by the inquiry. Since jurisdictional facts were lacking, inasmuch as the impugned order itself says that the commission has neither formed an opinion, nor has any prima facie case been made, yet against the petitioners, while quashing the impugned order the notices also deserve to be quashed.

(14) It was also contended on behalf of the petitioners that mechanical recital of provision of Section 8-B of the Act in the notice, without identifying any specific material makes the notice defective. Non-disclosure of the circumstances or allegations and non-supply of material amounts to denial of a reasonable opportunity of being heard and is a clear violation of principles of natural justice. Existence of circumstances is a condition precedent for recording a finding of necessity or formation of an opinion, as envisaged in Section 8-B. The existence of circumstances has to be brought forwarded and at least a clue has to be given in the notice as to what circumstances are available on the Commission's record, which led to its coming to a conclusion or forming an opinion that it is necessary to .serve notice on the petitioners. Non-identification of the relevant material by the

Commission itself is a circumstance which would vitiate the opinion. Principles of natural justice do not permit the withholding of any material on the basis of which a person ultimately will have to suffer conclusion, which might affect his reputation and career, therefore, the impugned order is liable to be quashed and set aside.

(15) It has also been contended that having regard to the fact that voluminous documents and affidavits have been filed before the Commission and substantial evidence has been recorded, mere inspection of record by the petitioners will not amount to giving them a reasonable opportunity of being heard in the absence of identifying specific material or allegations against each of the petitioners separately about the alleged role played by them or about the alleged material on the basis of which the Commission might have formed an opinion or considered it necessary that it was necessary to inquire into the conduct of the petitioners. It will also amount to violation of principles of natural justice.

(16) Learned Additional Solicitor General, on behalf of the respondent has contended that petitioners are not strangers to the inquiry. They had been participating in the proceedings and can very well carry out inspection of the records, which opportunity otherwise is available to them and has been so allowed to them, as is also stated in the notice. As regards the necessity to inquire into the conduct and formation of opinion as regards the reputation of any person likely to be prejudicially affected by the inquiry, it is only the possibility or chance of reputation of any person likely to be prejudicially affected by the inquiry and not a definite opinion which is to be formed at this stage by critically examining the material by writing an elaborate order. The Commission had rightly pointed out in its order that at this stage neither an opinion had been formed, nor it was required to be formed that the reputation of petitioners was likely to be prejudicially affected. Opinion which was required to be formed at this stage and which rightly was formed was as regards the possibility. The petitioners at the relevant time admittedly were at the helm of affairs. There is only a chance or possibility that the inquiry, in respect of the terms of reference, might affect prejudicially their reputation.

(17) It was also contended by the learned Additional Solicitor General that the Commission had issued notices only after considering the affidavits, documents and evidence on record. It was not without any material. It was not necessary to crystallize any material in the notice since petitioners were not strangers to the proceedings. By issuance of notices, only persons had been notified, who in the opinion of the Commission may ultimately be persons turn out to whose reputation was likely to be adversely commented upon. Mere issuance of notice under Section 8-B of the Act is not and cannot amount to making an accusation. It is a statutory protection available to the person and it is a part of principles of natural justice. Scope of Section 8-B has rightly been understood by the petitioners, who will be at liberty to cross-examine the witnesses, which have been produced so far and in case they so wish or desire they will be at liberty to adduce evidence in defense, if any. It is not necessary for them to file their affidavits or their version before cross examining the witnesses. It was contended that the last part of the notice can be severed from the remaining part/since the law does not require the notice, to whom notice under Section 8-B has been issued, to file any affidavit disclosing his defense.

(18) SUB-SECTION (1) of Section 3 empowers the Central Government to appoint, by notification, a Commission for the purpose of making an inquiry into any definite matter of public importance and perform such functions as may be specified in the notification. The Commission so appointed has to make an inquiry and perform its functions, one of which is to submit its report to the Government. Sub-section (4) of Section 3 requires the Central Government to lay before the House of Peoples the report of Commission together with memorandum of action taken thereupon within a period of six months of the submission of the report by the Commission. Section 4 of the Act clothes the Commission with some of the powers, possessed by a Civil Court while trying a suit, such as enforcing the attendance of witness(es), examining them on oath, discovery and production of documents, receiving evidence on affidavits, requisitioning any public record etc. Having regard to the nature of the inquiry and the other circumstances of the case, the Government under Sub-section (1) of Section 5 of the Act is empowered to direct that all or any of the provisions contained in Sub-sections (2), (3), (4) and ((5) thereof shall apply to the Commission which in turn would enable the

Commission to require any person to furnish information to the Commission and to enter into any building or place wherein documents relating to subject matter of the inquiry may be found.

(19) Considering the provisions of the Act and its general scheme that a Commission appointed under the Act is a purely fact-finding body, having no power to pronounce a binding or definite judgment, it definitely has power to collect facts through the evidence led before it and on consideration thereof it is required to submit its report, which the Appointing Authority may or may not accept. In *State of Karnataka v. Union of India and Another* : [1978]2SCR1 , it was held that there are sensitive matters of public importance which, if left to the normal investigational agencies, can create needless controversies and generate an atmosphere of suspicion. The larger interest of the community requires that such matters should be inquired into by a high-powered Commission, consisting of persons, whose findings can command the confidence of people. Police investigation is at its very best a unilateral inquiry into accusation, since the person whose conduct is subject matter of inquiry has no right or opportunity to cross-examine the witnesses, whose statements are being recorded by the police. Considering the scope and nature of the rights conferred under Sections 8-B and 8-C of the Act, which were inserted in the principal Act by the Commission of Inquiry (Amendment) Act, 1971 (Act No. 79 of 1971), it was observed that Section 8-C of the Act confers a right of cross-examination, a right of audience, right of representation through a legal practitioner on every person referred to in Section 8-B and with the permission of the Commission on any other person, whose evidence is recorded by the Commission. Clauses (a) and (b) of Section 8-B refers respectively to persons whose conduct the Commission considers it necessary to inquire into and persons whose reputation, in the opinion of the Commission, is likely to be prejudicially affected by the inquiry. It was further observed.

'It is deniable that the person whose conduct is being inquired into and if he be a Chief Minister or a Minister, the doings of the Government itself, are exposed to the fierce light of publicity. But that is a risk which is inherent in every inquiry directed at finding out the truth. It does not however, justify the specious submissions that the Inquiry constitutes an interference with the executive

functions of the State Government or that it confers on the Central Government the power to control the functions of the State executive. After all, it is in the interest of those against whom open allegations of corruption and nepotism are made that they should have an opportunity of repelling those allegations before a trained and independent Commission of Inquiry which is not bound by the technical rules of evidence. 'It is only by establishing the truth that the purity and integrity of public life can be preserved' and that is the object which the Commission of Inquiry Act seeks to achieve'.

(20) On the importance and object of the Commission, Justice K. Jagannatha Shetty in *Kehar Singh and Others v. State (Delhi Administration)* : 1989 CriLJ1 , made the following observations:

'A Commission appointed under the Act does not decide any dispute. There are no parties before the Commission. There is no lis. The Commission is not a Court except for a limited purpose. The procedure of the Commission is inquisitorial rather than accusatorial. The Commission more often may have to give assurance to persons giving evidence before it that their statements will not be used in any subsequent proceedings except for perjury. Without such assurance, the persons may not come forward to give statements. If persons have got lurking fear that their statements given before the Commission are likely to be used against them or utilised for productive use on them in any other proceeding, they may be reluctant to expose themselves before the Commission. Then the Commission would not be able to perform its task. The Commission would not be able to reach the nuggets of truth from the obscure horizon. The purpose for which the Commission is constituted may be defeated'.

Sections 8-B and 8-C of the Act with which we are concerned read :

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

'8C.Right of cross-examination and representation by legal practitioner.-The appropriate Government, every person referred to in Section 8-B 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 provided 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.

(21) The submission on behalf of the petitioners is that inasmuch as the opportunity, which is to be afforded under Section 8-B of the Act is with a view to defend the conduct and reputation of a person. The opinion to be formed by the Commission under Clause (b) of Section 8-B of the Act will acquire accusatorial character, therefore, the same is quasi-judicial in nature. By the introduction of Sections 8-B and 8-C in the Act, the legislature has super-imposed the disciplinary procedure on the inquisitorial nature of the Commission, When conduct and reputation of a person is involved. The Act envisages two sets of decisions - one is the formation of an opinion by the Government to constitute an inquiry under Section 3 of the Act and the second being the formation of an opinion by the Commission that the reputation of any person is likely to be prejudicially affected by the inquiry, whose conduct it is necessary to inquire into. The two sets of the decisions are distinct in character - one is to be taken by the Government and the other by the Commission. The Commission while forming an opinion under Clause (b) of Section 8-B of the Act must do so on the basis of some material on record. Such formulation of opinion must be arrived at independently without reference to the formation of opinion by the Government. Such a decision must be based on a rational criteria, consistent with the object of and scheme of the Act and in case it is based upon irrelevant factors the same is vitiated. Opinion must be formed after

due application of mind stating the grounds for such an opinion and the Commission must not abdicate its discretion as to the prior decision of the Government to constitute such Commission. It was contended that the impugned order, on the face of it suggests that it has proceeded without application of mind. It proceeded on the assumption that it was necessary to inquire into the conduct of the petitioners which was likely to affect the reputation of the petitioners adversely. The test to be applied in considering whether there has been due application of mind by the Commission is to look at the notice. Since particular information was not contained in the notice, it must be assumed that there was no application of mind. Any notice issued without due application of mind must be quashed. The Act does not contemplate a roving inquiry and fishing expedition. Persons against whom notices have been issued are entitled to know the specific allegation or charges against them or any material or circumstances against them so that they are able to set up a proper defense in relation to the specific allegations, charges and are placed in a better position to cross-examine the witnesses. Petitioners are also entitled to know the material against them which is likely to be used against them.

(22) Admittedly the notice nowhere discloses the grounds of satisfaction by the Commission in forming an opinion on the two aspects, as contemplated in Clauses (a) and (b) of Section 8-B of the Act. Notice also does not set out particulars of any material, which might be available on the Commission's record, which might have been taken note of by the Commission in forming an opinion that it is necessary to inquire into the petitioners' conduct or that due to such inquiry petitioners' reputation was likely to be prejudicially affected. The notice merely says that several affidavits and documents have been filed and the Central Government has examined its evidence and on careful consideration of the material produced, the Commission considers it necessary to inquire into petitioners' conduct and is also of the opinion that their reputation is likely to be affected by the inquiry, in respect of the terms of reference, mentioned in Clauses (a) to (e) thereof.

(23) The scope of the inquiry is: the investigation as to the sequence of the events leading to the facts and circumstances relating to the occurrences in the Ram

Janma Bhoomi-Babri Masjid complex at Ayodhya; the role played by (a) Chief Minister; (b) Members of the Council of Ministers; (c) Officials of the Government of Uttar Pradesh; (d) the individuals concerned; (e) Organisations; and (f) agencies in or in connection with the destruction of the Structure; Notification further requires the Commission to inquire into the deficiencies in the security measures and other arrangements as prescribed or operated in practice by the Government of Uttar Pradesh, which might have contributed to the events that took place at Ram Janma Bhoomi-Babri Masjid complex at Ayodhya, including the sequence of events relating to the assault on media persons and any other matter related to the subject of inquiry.

(24) The notification has not named or identified the members of the Council of Ministers, Government Officials, members of the public or, the officials or members of organisations, whose role is to be inquired into. The notification says Minister, Members of the Council of Ministers, Officials of the Government and individuals without disclosing their names. In order to find out or identify the person the Commission, as the order says, not only published public notice, asking for information but also served individual notices upon some specified persons, 'who could be identified', in order to provide them an opportunity to give information with respect to the role played by the Chief Minister, Council of Ministers, Government Officials and individuals. This, according to the impugned order was done in order to find out the role played by the Chief Minister, Council of Ministers, Government Officials and various individuals. The impugned order says that the information was also sought from the petitioners herein amongst other numerous persons and organisations and in answer to the said notices, instead of supplying the relevant information, objections were raised by them; with respect to the legality or propriety of service of notices on them, inter alia, on the ground that in view of the inquiry being made with respect to the role played by the Chief Minister, Council of Ministers, Organisations, Agencies and other persons with respect to the lapse on security measures etc. the persons from whom the information was sought, including the petitioners, since their conduct was directly under investigation they were covered by Clauses (a) and (b) of Section 8-B of the Act consequently the Commission had no jurisdiction to seek information from them about their own conduct leading to the events and other subject matters under inquiry. It is stated

in the impugned order that on 27.9.1993 it was observed by the Commission that it was not the conduct of the petitioners which was under consideration but it was the role played by the persons referred to in the notification, which was under consideration, which may include their conduct and conduct would not necessarily include role. The order further says that at this stage only an opportunity was afforded to the petitioners and other persons to enable them to participate in the publicly open proceedings of the Commission and that requisite notice under Clause (b) of Section 8-B of the Act would be issued only when the Commission would 'ever remotely feel objectively or subjectively' that reputation of the applicants was likely to be adversely affected either on the basis of the evidence which has come on record or on account of inference likely to be drawn because of the constitutional moral and legal duties of the persons involved who were enjoined with the duty to protect the structure. Since requisite information was not supplied by the petitioners, it was on the basis of the notices, issued to general public, as well as to individuals and on the basis of affidavits filed and evidence led by the Central Government and documents filed by the State Government that Commission was of the opinion that it has become necessary at this stage to serve notice under Section 8-B of the Act on the petitioners. It was thought that the petitioners' reputation was likely to be adversely affected and their conduct required an inquiry, particularly keeping in view that the circumstances petitioners were sitting at the helm of affairs and were spearheading the particular movement which ultimately resulted in demolition of the structure.

(25) In the impugned order the Commission, on the petitioners' request for supplying or identifying the requisite material available with the Commission being the basis on which the requisite opinion has been formed, has observed that since the petitioners were at the helm of affairs and it was their legal, moral and constitutional obligation jointly and collectively, including those of the organisations, it had become necessary to inquire into their conduct and since inquiry into the conduct was likely to prejudicially affect the reputation of the persons, therefore, notices had been issued. In other words, the Commission in the impugned order has said that no such opinion that petitioners' reputation was likely to be prejudicially affected had been formed. According to the Commission, forming of opinion at this stage is not in the sense, as is envisaged in Section 8-B

of the Act, but it was only to the extent of identification of names since the notification required the Commission to identify the persons and inquire into the role played and in view of the material on record at this stage of the inquiry the Commission thought that it had become necessary to inquire into the petitioners' conduct that an opportunity was being given to them so that they may avail of that opportunity since while inquiring into the conduct the same was likely to prejudicially affect the petitioners' reputation.

(26) The Act nowhere requires a specific notice to be issued to the persons referred to in Clauses (a) and (b) of Section 8-B of the Act. It is also not the requirement of the act to bring to the notice of the persons any material or allegations or to spell out the charges before giving opportunity of being heard in the inquiry and to produce evidence in defense. The law requires only an opportunity to be given to those persons, when at any stage of inquiry the Commission considers it necessary to inquire into their conduct or when in the opinion of the Commission reputation of any person was likely to be prejudicially affected by the inquiry. The Act also nowhere enjoins upon the Commission to serve a notice upon the persons referred to in Clauses (a) and (b) of Section 8-B of the Act. The Act only enjoins upon the Commission to give that person, whose conduct it considers necessary to inquire or when the Commission is of the opinion that reputation of that person was likely to be prejudicially affected by the inquiry, a reasonable opportunity of being heard in the inquiry and produce evidence in his defense. The person to whom that opportunity is to be given has got the statutory right of being heard, which has been spelled out in Section 8-B of the Act, namely, right to cross-examine the witnesses, other than a witness provided by him, right to address the Commission and right to be represented before the Commission by a legal practitioner or with the permission of the Commission by any other person.

(27) Reading of provisions of Sections 8-B and 8-C of the Act together would imply that principles of natural justice are statutorily incorporated in the Act in a situation when Commission considers it necessary to inquire into the conduct of any person; during the course of inquiry, or in its opinion the inquiry was likely to prejudicially affect the reputation of any person. The statutory right does not

stretch any further than of giving a reasonable opportunity of being heard, which includes right to cross-examine the witnesses other than the witnesses provided by the person addressing the Commission, of being represented by a lawyer or any other person with the permission of the Commission and in producing evidence in defense. The underlying idea and the object of Section 8-B of the Act is that a person has to be put on his guard by the Commission, when it considers it necessary to inquire into his conduct or when Commission is of the opinion that the reputation of that person was likely to be prejudicially affected by the inquiry. Serving of notice under Section 8-B of the Act is not envisaged. In *Smt. Kiran Bedi and finder Singh v. The Committee of Inquiry and Another* : 1989 CriLJ903 , it was held that mere non issue of notice under Section 8-B of the Act ought not to make any difference, if the person otherwise satisfies the conditions mentioned in Section 8-B, since issue of notice is not contemplated under Section 8-B of the Act. It is only, if at a stage the Commission considers it necessary to inquiry into the conduct of the person, such person thereafter would be governed by Section 8-B of the Act. The impugned order says and it was also not disputed at the Bar, during the course of the hearing that after notices had been issued and before the evidence was examined by the Central Government most of the petitioners were represented and had an opportunity to hear (watch) the proceedings of the inquiry, which is an open inquiry. As many as 53 witnesses had been examined by the Central Government and it is stated on behalf of the State of Uttar Pradesh that no further evidence is to be add produced by it. Number of documents have also been produced. The Commission has in the impugned order observed that record is voluminous and it is not physically possible to supply copies of the same to each individual. The person to whom notices have been issued have been given a right to carry out inspection and as such it is not necessary that they should be provided with material or that material should be identified in each individual case at this stage of proceedings or to spell out specifically the role played by each one of them, since according the Commission no opinion had been formed about the specific role played by each of the petitioners. It is yet to be found out during the course of the inquiry.

(28) In rise the petitioners are the persons, who have been identified by the Commission, at this stage, for whom the Commission has thought it necessary to

inquire into their conduct, being die person, who at the relevant time were positioned as the Principal Secretary and Special Secretary to the State of Uttar Pradesh in the Home Department; Director General, U.P. Police; Commissioner, Faizabad Division; the Joint Zonal Organiser, Secretary and the members of Vishwa Hindu Parishad; and in case the Commission is of the opinion that such persons were at the helm of affairs, whose legal as also moral duty was to protect the structure and an inquiry into their conduct is likely to prejudicially affect their reputation, undoubtedly the petitioners would be entitled to a fair opportunity of being heard in the inquiry. Opportunity of being heard, which statutorily provides a right to cross-examine the witnesses; address the Commission and produce evidence in defense can naturally be exercised only when attention of the person concerned is drawn to a precise case or allegation which he has to meet. The person concerned cannot be expected to guess for himself about the material likely to be used against him, which might be available on the record of the Commission. The circumstances or the material, of whatever nature it might be, in case the same is available on the record of the Commission, which might have led the Commission, even to extent of identifying the names of the persons with respect to whom it considered necessary to inquire into their conduct, which inquiry in the opinion of the Commission was likely to prejudicially affect the petitioner, it was but necessary, as a part of complying with requirements of principles of natural justice to have either apprised the petitioners about such circumstances or supply the material or when it is voluminous to allow them an excess to the record to enable them to inspect and obtain copies or extracts. Commission says that it has not yet formulated an opinion, which in its order means a final opinion, which is yet to be arrived at in the case or an opinion of the nature, which if no other material is produced before it to the contrary, would be a final opinion. In such an eventuality the principles of natural justice would require that such material be supplied to the petitioners, which impelled the Commission to issue notice. In case Commission was of the opinion that documents are voluminous and cannot be supplied to the petitioners, the law requires that an opportunity has to be given to them to carry out inspection of the documents and/or to pray for supplying to them copies or extracts of the documents or of other material available on record at their own costs. In case this course is

adopted, the principles of natural justice would stand duly complied with. When record is voluminous, copies thereof need not accompany, the notice or be supplied. Inspection may be allowed with right to apply for copies. Similar course was adopted by the Supreme Court in *Committee of Management Kisan Degree College v. Shambhu Saran Pandey and Others* : (1995)11LLJ625SC . The Court observed

'IF the department of the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would viola to the principles of natural justice. At the enquiry, if the delinquent seeks to support his defense with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent'.

(29) In the instant case, the notice itself gave the petitioners to carry out inspection. As such it will be for the petitioners to carry out inspection of the documents, which are produced before the Commission, during the Course of the , inquiry. In case petitioners would require copies of any of the documents or extracts ( there from, even according to the impugned order that right has not been denied to the petitioners. It would be open to the petitioners to obtain copies or extracts at their own expense which prayer, if made, will definitely be allowed by the Commission.

(30) Since neither the Statute requires, nor it envisages issuance of any notice under Section 8-B of the Act to such of the persons who are covered by Clause (a) or (b) thereof, except of providing an opportunity of being heard in the inquiry, it was not necessary for the Commission, in case it thought it fit to issue notices, to spell out in the notices the material available on its record on the basis on which the Commission considered it necessary to inquire into the petitioners' conduct or for that the Commission came to the conclusion that the petitioners are the

persons, who have been identified, whose conduct must be inquired into by it or about the role played by them in connection with the destruction of the structure. When no notice is required to be served, it was not necessary to state in the notice about the material available with the Commission. The opinion, as envisaged, in Clause (b) of Section 8-B is not a definite opinion of a nature that if the documents or material which are on record, if not rebutted would lead to the drawing of conclusion on the reputation of petitioners that the same is to be adversely reported upon by the Commission; but is to the extent that the inquiry into the conduct was likely to prejudicially affect the petitioners' reputation. Neither the impugned order, nor the notice is vitiated for non-disclosure of the grounds in the impugned order or in the notice or for lack of any material on record because of the right reserved to the petitioners of carrying out of inspection of the record.

(31) It was fairly and rightly conceded by the learned Counsel for the respondents that the impugned notice, insofar as it has called upon the petitioners to state their case on affidavit, cannot be sustained. It was stated that since the same is severable, the same can either be ignored or direction deserves to be issued that the petitioners need not file an affidavit and in case the affidavit is not filed no adverse inference is to be drawn against the petitioners. We also find that Commission was not right in having required the petitioners at the first instance to file an affidavit stating their case. Petitioners need not file an affidavit at this stage. Section 8-B of the Act requires the affording of an opportunity to the petitioner to appear and of being heard in the inquiry and produce evidence, if any, in defense. The opportunity of being heard includes right to cross-examine witnesses other than a witness produced by him; addressing the Commission and to be represented by Counsel or any other person with the permission of the Commission. Petitioners need not, in case they would not like to do so, produce list of their witnesses in defense at this stage in support of their version. Notice to that extent, is contrary to the provisions of law but it need not make the entire notice bad in law for that reason since this part is severable and can be struck down. In Kiran Bedi's case (*supra*) the Court had set aside the direction, which had been issued by the Committee in that case, which had been constituted under the provisions of the Act, which required the petitioners in those cases, to stand in the witness box for cross-examination at the initial stage of the inquiry and to produce

their evidence in their defense at the very inception of the inquiry. Such notice was held to be a contradiction in terms, inasmuch as in a situation of that case a person would really be required to disprove statements prejudicial to him of such witnesses, who were yet to be examined and it would also reduce the right of cross-examination by such persons to a mere formality for the obvious reason that by the time the witnesses who were to be cross-examined were produced, the defense 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 were likely to refashion their statements accordingly.

(32) In the instant case also the petitioners could not have been asked to state their case on affidavits and to submit their lists of witnesses at this stage. The only fact which the notice ought to have stated was that the petitioners might appear in the inquiry, to carry out inspection of the record and then to submit a list of witnesses whom they would like to cross-examine and thereafter in case they would like to produce their evidence in defense, if any to supply a list of defense witnesses, lead defense evidence and then address the Commission. The basic underlying idea in incorporation - Section 8-B of the Act is to give statutory recognition to the rules of natural justice, namely not to condemn a person without hearing him. So long the person has not been denied the opportunity as envisaged in the Act, mere failure to give reasons in the notice will not vitiate the same.

(33) In view of what has been observed aforementioned, the impugned notice and impugned order are not liable to be quashed except that part of the notice which in para 7 thereof required the petitioners to state their case on affidavits and submit their lists of witnesses and produce documents, if any, in support of their version. To that extent the notice, as has rightly been conceded on behalf of the respondents also, shall stand quashed. The remaining part of the notice which is severable is valid. It will be open for the petitioners to carry out inspection of the Commission's record. Commission also will provide a reasonable opportunity to die petitioners to carry out inspection, if applied for. In case any of the petitioners would like to have copies of documents, statements and affidavits, or extracts there from, the same will be supplied to the petitioners at their expense. The Commission thereafter will proceed with the inquiry, after allowing a reasonable

opportunity to the petitioners of being heard in the inquiry and to produce evidence, if any, in their defense. Needless to add that the opportunity of being heard would include right to cross-examine the witnesses already examined, if a request to that behalf is made by supplying their names and then address ing the Commission and to be represented by Counsel.

(34) Petitions stand disposed of and interim orders stand vacated. There will be no order as to costs.

(35) A photo copy of this order will be placed by the Registry in each of the respective files.

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