The Commissions of Inquiry Act, 1952

February 20, 2013

INTRODUCTION

Before the enactment of Commissions of Inquiry, Act, 1952, the government ordered public inquiry either by executive notice under the Public Service Inquiries Act, 1850 or by making add hoc legislation. To meet the ever-growing need for ever-increasing demand for public inquiries by independent and impartial authority the procedure adopted by the government was found to be cumbersome and inadequate. Hence the need was felt that a suitable legislation be brought out on the subject, resulting in the introduction of the Commissions of Inquiry Bill, 1952 in the Parliament.

ACT 60 OF 1952

The commissions of Inquiry Bill, 1952 was passed by both the Houses of Parliament and after being assented by the President of India it became the Commissions of Inquiry Act, 1952 (60 of 1952)

LIST OF AMENDING ACTS

1. The commissions of Inquiry (Amendment) Act, 1971 (79 of 1971)

2. The Delegated Legislation Provisions (Amendment) Act, 1985 (4 of 1986)

3. The Commission of Inquiry (Amendment) Act, 1986 (36 of 1986)

4. The Commissions of Inquiry (Amendment) Act, 1988 (63 of 1988)

5. The Commissions of Inquiry (Amendment) Act, 1990 (19 of 1990)

Preamble

(14th August, 1952)

An act to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers.

1. Short title, extend and commencement –

ACT NO. 60 OF 1952

1*AN ACT TO PROVIDE FOR THE APPOINTMENT OF COMMISSIONS OF I NQUIRY ANDFOR VESTI

[14th August, 1952.]

BE it enacted by Parliament as follows: –

(1) This Act may be called the Commissions of Inquiry Act, 1952.

[1][(2) It extends to the whole of India:

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it relates to inquiries pertaining to matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.]

(3) It shall come into force on such date[2] as the Central Government may, by notification in the Official Gazette, appoint.

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1. Subs. by Act 79 of 1971, sec. 2, for sub-section (2) (w.e.f. 30-12-1971).

2. Came into force on 1-10-1952, vide S.R.O. 1670, dated the 30th September, 1952, published in the Gazette of India, Extra., Pt. II, Sec. 3, p. 861.

This Act, as amended by Act 79 of 1971, came into force in the State of Jammu and Kashmir on 6-3-1972 and in the districts of Kohima and Mokokchung in the State of Nagaland on 15-2-1972, vide Notification Nos. 94(E), dated 4th March, 1972 and 74(E), dated 14th February, 1972 respectively, issued under section 15 of Act 79 of 1971.

2. Definitions – In this Act, unless the content otherwise requires-

(a) "Appropriate Government" means –

(i) The Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List 1 or List III in the Seventh Schedule to the Constitution , and

(ii) The State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution.

[1] Provided that in relation to the State of Jammu and Kashmir, these clauses shall have effect subject to the modification that-

(b) In sub clause (I) thereof, for the words and figures "List 1 or List II or List III in the Seventh Schedule to the Constitution" , the words and figures, List 1 or List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir" shall be substituted.

(c) In sub clause- (ii) thereof, for the words an figures "List II or list III in the Seventh Schedule to the Constitution, the words and figures

"List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir " shall be substituted.

(d) "Commission" means a Commission of Inquiry appointed under Section 3

(e) "Prescribed" means prescribed by rules made under this Act.

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1. Added by Act 79 of 1971, sec. 3 (w.e.f. 30-12-1971).

2A. Construction of references to laws not in force in the State of Jammu and Kashmir –

[1] Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State , be construed as a reference to the corresponding law, if any, in force in that State.

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1. Ins. by Act 79 of 1971, sec. 4 (w.e.f. 30-12-1971).

3. Appointment of Commission –

(1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if resolution in this behalf is passed by [2]each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and with such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.

Provided that where any such Commission has been appointed to inquire into any matter-

(a) By the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same mater for so long as the Commission appointed by the Central Government is functioning.

(b) By a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one members, one of them may be appointed as the Chairman thereof.

[3](3) [Note: Ins by Act 79 of 1971, sec.5.] The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4) The appropriate Government shall cause to be laid before ([Note : Subs. by Act 19 of 1990, sec 2, for certain words.]each House of Parliament, or, as the case may be, the Legislature of the State), the report, if nay, of the Commission on the inquiry made by the Commission under sub section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.

[4][***]

(i) It is essential that formation of opinion by the State Government as to Appointment of any Commission of Inquiry depends on its subjective satisfaction based primarily on an objective or real material and not merely on some vague allegations or hearsay evidence or to make fishing enquiry, State of Madhya Pradesh v. Arjun Singh, AIR 1993 SC 1239.

(ii) Since the appointment as Commission of Inquiry does not necessarily require the qualification of a sitting judge of High Court subsequent of such appointment does not invalidate it, Sardar Malkeet Singh v. State of U.P., AIR 1993 All343.

(iii) Just as a Commission appointed in pursuance to a resolution passed by the State legislature (or, as the case may be, the House of People cease) to exist on a resolution for discontinuance being passed by the appropriate House, similarly a Commission appointed in pursuance to the direction of the court shall cease to exist or discontinue with the government exercising its power under Section 7 of the Act only with the concurrence of such court. Directions of such court to the government in this behalf are in no way usurpation of latter's power/ discretion. The powers in this regard of State Government and State legislature to constitute commission are independent, State of Orissa, Janamohan Fay, AIR 193 Ori 180.

(iv) Even though it is the discretion of the appropriate Government to set up a Commission under this section, the court can not be silent spectator to deteriorating conditions in the government run hospital and the miserable plight of the patients who, by and large, come from poor and weaker sections of the society. The court can intervene and appoint Commissioner (s) to go into the matter and submit their report (with suggestions of remedial measures to be taken). Thereafter, the court after giving due opportunities to both the parties, it may give such directions as it deems proper in public interest to such appropriate government, Siddha Raj Dhadda v. State of Rajasthan, AIR 1990 Raj 34.

(v) Since the Commission appointed in exercise of executive power was 'unacceptable' as it suffered form fundamental infirmities on account of faulty, scrappy and untenable inquiry, there was nothing unreasonable & mala fide on the part of the government in appointing a Commission under this section of the Act, specially in the light of persistent and fervent demands for a further and deeper enquiry, R. Balakrishna Pillai v. State of Kerala, AIR 1989 ker 99.

(vi) By reason of non –placing of report of Commission before the legislature within the time limit prescribed by the relevant provision of this section, such report is not rendered void and the Government is not precluded from acting upon it especially when the legislature has not disapproved it, V. Narayana Rao v. State of A.P., AIR 1987 AP 53.

(vii) Petitioners in a public interest litigation have no legal or statutory right to compel the government to appoint a Commission of Inquiry even if there is a definite case of public importance, nor can the court, in such cases, issue directions to the government in that behalf, People Union for Democrative Rights v. Ministry of Home Affairs, AIR 1985 Del 268.

(viii) Fixation of Conference Hall of Inspection Bungalow of Kerala Sate Electricity Board as venue of siting of commission appointed for inquiry against erstwhile Minister for Electricity was held to be in noway adversely affecting a fair and proper inquiry, S.V. Purushothaman v. State of Kerala, AIR 1983 Ker 118.

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1. This Act has been extended to—

Goa, Daman and Diu by Reg. 12 of 1962, sec. 3 and Sch.

Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I (w.e.f. 1-7-1965).

Pondicherry by Reg. 7 of 1963, sec. 3 and Sch. I (w.e.f. 1-10-1963).

2. Subs. by Act 19 of 1990, sec. 2, for certain words (w.e.f. 28-8-1990).

3. Ins. by Act 79 of 1971, sec. 5 (w.e.f. 30-12-1971).

4. Sub-sections (5) and (6) omitted by Act 19 of 1990, sec. 2 (w.e.f. 28-8-1990). Earlier sub-sections (5) and (6) were inserted by Act 36 of 1986, sec. 2 (w.r.e.f. 14-5-1986).

4. Powers of Commission-

The Commission shall have the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely –

[1](a)Summoning and enforcing the attendance of any person from any part of India and examining him on oath.

(b) Requiring the discovery and production of any document.

(c) Receiving evidence on affidavits

(d) Requisitioning any public record or copy thereof form any court or office

(e) Issuing commissions for the examination of witnesses or documents

(f) Any other matter which may be prescribed.

COMMENTS

(i) The ambit of this section is too wide to be circumscribed by fetters of stage and its available to and exercisable by the Commission in calling any person concerned including those governed by section 8-B of this Act as witness irrespective of stage of inquiry, Smt. Kiran Bedi and Jinder Singh v. Committee of Inquiry, AIR 1989 SC714.

(ii) As the Commission was not supposed to undertake any elaborate in inquiry, criticism of Commission for not having made thorough investigation due to scarcity or paucity of staff cannot be sustained in view of powers of Commission under this section, V. Narayana Rao v. State of A.P. (FB), AIR 1987 ap 53.

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1. Subs. by Act 79 of 1971, sec. 6, for "summoning and enforcing the attendance of any person" (w.e.f. 30-12-1971).

5. Additional powers of Commission –

(1) Where the appropriate Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) should be made applicable to a Commission, the appropriate Government may, by notification in the Official Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry [2][and any person so required shall be deemed to be legally

bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code, 1860 (45 of 1860)].

(3) The Commission or any officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject-matter of the inquiry may be found, and may seize any books of account or documents or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, 1898 (5 of 1898), in so far as they may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (5 of 1898), forward the case to a magistrate having jurisdiction to try the same and the magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, 1898.

(5) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

State Amendment

Madhya Pradesh:

For section 5, substitute the following section, namely:—

" 5. Additional Powers of Commission .—(1) Where the State Government of opinion that having regard to the nature of the Inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) or sub- section (7) should be made applicable to Commission, the State government may, by notification, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for or relevant to, the subject-matter of the inquiry and any person so required shall be bound to furnish such information.

(3) The Commission or any officer, not below the rank of a gazetted officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject-matter of the inquiry, may be found, and may seize any such books of account or documents or take extract or copies therefrom, subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, 1898 (Act V of 1898), in so far as they may be applicable.

(4) The Commission shall be deemed to be a civil Court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228, of the Indian Penal Code, 1860 (Act XLV of 1860), is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for by the Code of Criminal Procedure, 1897 (Act V of 1898), forward the case to a magistrate having jurisdiction to try the same and the Magistrate to whom any such

case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, 1898, (Act V of 1898).

(5) If any person, by words either spoken or intended to be read, makes or publishers any statement or does any other act which is calculated to bring the Commission or any members thereof into disrepute, he shall be punishable with simple imprisonment which may extend to two years or with fine or with both.

(6) The provisions of section 198B of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply in relation to an offence under sub-section (5) as they apply in relation to an offence referred to in sub-section (1) of the said section 198B, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the State Government.

(7) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (Act XLV of 1860)."

[Vide Commissions of Inquiry (Madhya Pradesh Amendment) Act, 1966 (M.P. Act 29 of 1966), sec. 2 (w.e.f. 22-10-1966.]

West Bengal :

In section 5, in sub-section (3), add the following Explanation , namely:—

" Explanation .—For the purpose of sub-section (3), any police officer of or above the rank of Inspector of Police shall be deemed to be a gazetted officer."

[Vide Commissions of Inquiry (West Bengal Amendment) Act, 1980 (W.B. Act 49 of 1980) (w.e.f. 24-1-1981).]

After section 5, insert the following section, namely:—

5AA. Power to authorise a Commission to try certain offences summarily. —(1) Where the person or, as the case may be, one at least of the persons constituting a Commission appointed by the State Government is a person who is holding or has held the office of a Judge of the Supreme Court or of a High Court or any other judicial office not lower in rank than that of a Sessions Judge and the State Government is of opinion that, having regard to the nature of inquiry to be made and other circumstances of the case, the provisions of this section should be made applicable to such Commission, the State Government may, by notification in the Official Gazette, direct that the provisions of this section apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

(2) If any stage of a proceeding before the Commission it appears to the Commission that any person appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, the Commission may, if satisfied that it is necessary and expedient in the interest of justice that the person should be tried summarily for giving or fabricating, as the case may be, false evidence, taken cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973 and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

(3) When any such offence as is described in section 175, section 178, section 179 or section 180 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to simple imprisonment for a term which may extend to one month, or to fine which may extend to five hundred rupees, or to both.

(4) In every case tried under sub-section (3), the Commission shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

(5) Any person convicted on a trial held under sub-section (2) or sub-section (3) may appeal to the High Court and the provisions of Chapter XXIX of the Code of Criminal Procedure, 1973, shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(6) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in sub-section (4) of section 5 but nothing in this section shall affect the power (if any) of the Commission to proceed under sub-section (4) of section 5 in respect of any offence, where it does not choose to proceed under this section.

(7) Words and expressions used in this section and not defined in this Act shall have the same meanings as in the Code of Criminal Procedure, 1973.

[Vide The Commissions of Inquiry (West Bengal Amendment) Act, 1974 (W.B. Act 51 of 1974), sec. 6 (w.e.f. 12-12-1974).]

COMMENTS

(i) A Commission even though adopts a procedure of legal character and has power to administer an oath, is incapable of delivering a 'definite judgment' making it 'unfit' for the status of a court, particularly for the purposes of section 195 of Code of Criminal Procedure, 1974; Dr. Baliram Waman Hiraj v. Mr. Justice B. Lentin, AIR 1988 SC 2267.

(ii) The Commission does not enjoy the status of an adjudicating body and its inquiry is neither judicial nor quasi-judicial in nature. It is a civil court by fiction of law, for only limited purposes enumerated under the relevant provision of this section; Md. Ibrahim Khan v. Susheel Kumar, AIR 1983 AP 69.

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1. This Act has been extended to—

Goa, Daman and Diu by Reg. 12 of 1962, sec. 3 and Sch.

Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I (w.e.f. 1-7-1965).

Pondicherry by Reg. 7 of 1963, sec. 3 and Sch. I (w.e.f. 1-10-1963).

2. Ins. by Act 79 of 1971, sec. 7 (w.e.f. 30-12-1971).

5A. Power of Commission to utilise the service of certain officers and investigation agencies for conducting

investigation pertaining in inquiry –

[1] (1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the service,-

(a) in the case of a Commission appointed by the Central Government, of any officer or investigation agency of the Central Government or any State Government, as the case may be, or

(b) in the case of a Commission appointed by the State Government, of any officer or investigation agency of the State Government or Central Government with the concurrence of the State Government or the Central Government, as the case may be –

(2) For the purpose of investigation into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub section (1) may , subject to the direction and control of the Commission.

(a) summon and enforce the attendance of any person and examine him

(b) require the discovery and production of any document, and

(c) requisition any public record or copy thereof form any office

(3) The provisions of section 6 shall apply in relation to any statement made by a person before any officers or agency whose services are utilised under sub section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the commission.

(4) The officer or agency, whose services are utilised sub section (1) shall investigation into any matter pertaining to the inquiry and submit a report thereon (hereafter in this section referred to as the investigation report) to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusions, if any, arrived at in the investigation report submitted to it under sub section 94),and for this purpose the Commission may make such inquiry (including the examination of the person persons who conducted or assisted in the investigation) as it thinks fit.

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1. Ins. by Act 79 of 1971, sec. 8 (w.e.f. 30-12-1971).

5B. Power of Commission to appoint assessors-

[1]The Commission may, for the purpose of conducting any inquiry, appoint persons having special knowledge of any matter connected with the inquiry as assessors, to assist and advise the Commission in the inquiry and the assessors shall be entitled to such traveling and other expenses as may be prescribed.

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1. Ins. by Act 63 of 1988, sec. 2 (w.e.f. 10-12-1988).

6. Statements made by persons to the Commission –

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

Provided that the statement –

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

(b) Is relevant to the subject matter of the inquiry.

Comments

Statements made by witness before a Commission could be used in a criminal trial neither for the purpose of cross-examination to contradict the witness nor to impeach his credit. Neither the copies of statements made by witnesses before the Commission could be supplied to the accused as prayed for nor the Report of the Commission could be summoned being of no evidentiary value in such trial, owing to restrictions contained in this section of the Act. (Smt. Indira Gandhi Murder case) Kehar Singh v. State (Delhi Admn.) AIR 1988 SC 1883.

6A. Persons not obliged to disclose secret process of manufacture of goods in certain cases-

[1] Except in cases where a Commission in expressly required to inquire into the process of manufacture of any goods, nothing in this Act shall be deemed to compel any person giving evidence before the Commission to disclose any secret process of manufacture thereof.

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1. Ins. by Act 79 of 1971, sec. 9 (w.e.f. 30-12-1971).

7. Commission to cease to exist when so notified-

[1](1) The appropriate Government may, by notification in the Official Gazette, declare that-

(a) A Commission other than a Commission appointed in pursuance of a resolution passed by ([Note: Subs. by Act 19 of 1990, sec. 3, for certain words] each House of Parliament or, as the case may be, the Legislature of the State) shall cease to exist, if it is of opinion that the continued existence of the Commission is unnecessary.

(b) A Commission appointed in pursuance of a resolution passed by[2] each House of Parliament or, as the case may be, the Legislature of the State shall cease to exist if a resolution for the discontinuance of the Commission is passed by [Note: Subs. by Act 19 of 1990, sec. 3, for certain words] each House of Parliament or, as the case may be, Legislature of the State.

(2) Every notification issued under sub section (1) Shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.

COMMENTS

If in the opinion of the Government the Commission had collected sufficient necessary material for an effective and expeditious examination by an expert officer for making necessary decision(s) and thus, further continuance of the said inquiry was wholly unnecessary, there was no malice or influence of collateral considerations in the exercise of its discretionary power by

the Government to discontinue the said inquiry; State of Gujarat v. Consumer & Education Research Centre, AIR 1984 SC 652.

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1. Subs. by Act 79 of 1971, sec. 10, for section 7 (w.e.f. 30-12-1971).

2. Subs. by Act 19 of 1990, sec. 3, for certain words (w.e.f. 28-8-1990).

8. Procedure to be followed by the Commission –

The commission shall, subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) [1]

Comments

The Commission of Enquiry has full power and jurisdiction to fix its own place of siting (s). if the affected persons (or petitioners) approach or make a request to the Commission in that behalf, the Commission can also consider to hold it sitting at some other place if it is satisfied that it would be safer and convenient to do so at such a place, Sardar Malkett Singh V. State of U.P., AIR 1993 ALL 343.

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1. Certain words omitted by Act 79 of 1971, sec. 11 (w.e.f. 30-12-1971).

8A. Inquiry not to be interrupted by reason of vacancy or change in the constitution of the Commission-

[1](1) Where the Commission consists of two or more members, it may act notwithstanding the absence of the Chairman or any other member or any vacancy among its member.

(2) Where during the course of an inquiry before a Commission, a change has taken place in the constitution of the Commission by reason of any vacancy having, been filled or by any other reason, it shall not be necessary for the Commission to commence the inquiry a fresh and the inquiry may be continued from the stage at which the change took place.

Comments

Sub section (2) does not cover reconstitution of Commission by replacement or substitution of existing member. It only deals with an eventuality, such as decrease in the number of members, when the original number is more than one, and the vacancy remains unfilled, State of Madhya Pradesh v. Ajay Singh, AIR SC 825.

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1. Ins. by Act 79 of 1971, sec. 12 (w.e.f. 30-12-1971).

8B. Persons likely to be prejudicially affected to be heard –

[1]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 a witness is being impeached.

Comments

If witnesses otherwise satisfy the requisite conditions of this provisions so as to come under its ambit, they have to be examined at the end of the inquiry and not at the beginning thereof, irrespective of the fact of issue of notices to them which conditions is definitely not an essential ontemplation under this provision, Kiran Bedi v. Committee of Inquiry, AIR 1988 SC 2252.

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1. Ins. by Act 79 of 1971, sec. 13 (w.e.f. 30-12-1971).

8C. Right of cross examination and representation by legal practitioner –

[1]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 and other person.

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1. Ins. by Act 79 of 1971, sec. 13 (w.e.f. 30-12-1971).

9. Protection of action taken in good faith –

No suit or other legal proceeding shall lie against the appropriate Government, the Commission or any member thereof, or any person acting under the direction either of the appropriate Government or of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders may there under or in respect of the publication, by or under the authority of the appropriate government or the Commission, of any report, paper or proceedings.

10. Members, etc., to be public servants –

Every member of the Commission and every officer appointed or authorised by the Commissioner in exercise of functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal code, 1860 (45 of 1860).

10A. Penalty for acts calculated to bring the Commission or any member thereof into disrepute –

[1] (1) if any person, by words either spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Commissioner or any member thereof into disrepute, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) [2] Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 f 1974), when an offence under sub section (1) is alleged to have been committed, the High Court may take cognizance of such offence, without the case being committed to it, into a complaint in writing, made by a member of a commission or an officer of the Commission authorised by it in this behalf.

(3) Every complaint referred to it in such section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No High Court shall take cognizance of an offence under sub section (1) unless the complaint is made within six months form the date of which the offence is alleged to have been committed.

(5) A High Court taking cognizance of an offence under sub section (1) shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a court of a Magistrate.

Provided that the personal attendance of a member of a Commission as a complainant or otherwise is not required in such trial.

(6) Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974) an appeal shall lie as a matter of right from any judgement of the High Court to the Supreme Court, both on facts and on law.

(7) Every appeal to the Supreme Court under sub section (6) shall be preferred within a period of thirty days from the date of judgement appealed from

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the period of thirty days.

Provided that a Commission shall sit in private on a request being made by the Central Government in that behalf.

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1. Ins. by Act 79 of 1971, sec. 13 (w.e.f. 30-12-1971).

2. Subs. by Act 63 of 1988, sec. 3, for sub-section (2) (w.e.f. 10-12-1988).

11. Act to apply to other inquiring authorities in certain cases –

Where any authority (by whatever name called), other than a Commission appointed under section 3, has been or is set up under any resolution or order of the appropriate Government for

the purpose of making an inquiry into any definite matter of public importance and that Government is of opinion that all or any of the provisions of this Act should be made applicable to that authority, that Government may, subject to the prohibition contained in the proviso to sub section (1) of section 3, by notification in the Official Gazette, direct that the said provisions of this Act shall apply to that authority, and on the issue of such a notification that authority shall be deemed to be a Commission appointed under Section 3 for the purposes of this Act.

12. Power to make rules –

(1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) The term of office and the conditions of service of the members of the Commission

(b) The manner is which inquires may be held under this Act and the procedure to be followed by the Commission in respect of the proceedings before it.

(c) The powers of civil court which may be vested in the Commission

[1](cc) [Note: Ins. by Act 79 of 1971, sec. 14.] The traveling and other expenses payable to assessors appointed under section 5B, and to person summoned by the Commission to give evidence or to produce documents before it.

(a) Any other matter which has to be, or may be, prescribed.

[2](3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [3](in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid) both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

[4](4) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before the Legislature.

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1. Ins. by Act 63 of 1988, sec. 4 (w.e.f. 10-12-1988).

2. Ins. by Act 79 of 1971, sec. 14 (w.e.f. 30-12-1971).

3. Subs. by Act 4 of 1986, sec. 2 and Sch., for certain words (w.e.f. 15-5-1986).

4. Ins. by Act 4 of 1986, sec. 2 and Sch. (w.e.f. 15-5-1986).

Rule

THE COMMISSIONS OF INQUIRY (CENTRAL) RULES, 1972

THE COMMISSIONS OF INQUIRY (CENTRAL) RULES, 1972

[Note : vide Notification No. G.S.R. 899, dated 15 th July, 1972]

In exercise of the powers conferred by section 12 of the Commission of Inquiry Act, 1952 (60 of 1952), the Central Government hereby makes the following Rules, namely:-

1. Short title, Commencement and Application- (1) These rules may be called the Commissions of Inquiry (Central\) Rules, 1972

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) They shall apply to a Commission of Inquiry appointed by the Central Government under section 3 of the Commission of Inquiry Act, 1952

2. Definitions – In these Rules unless the context otherwise requires –

(a) 'Assessor' means an assessor appointed under these Rules.

(b) 'Commission' means a Commission on inquiry appointed by the Central Government under Section 2 of the Commissions of Inquiry Act, 1952.

3. Election of a Presiding Officer for a Meeting-

(1) Where a Commission consists of 3 or more members, then during the temporary absence of the Chairman thereof, the members present and participating in its proceedings, may elect one member form amongst themselves, to preside, for the time being, in respect of the said proceedings. (2) The member who presides temporarily under sub-rule (1) shall not be deemed to be the Chairman of the Commission.

4. The Issue and Service of Summons –

(1) A Commission may issue summons to persons whose attendance before it may be required either to give evidence or to produce documents. (2) Every summons issued by a Commission shall be in duplicate and shall be signed by the Chairman thereof or by such persons as he may empower in this behalf. It shall be sealed with the seal of the Commission and shall specify the time and a place at which the person summoned is required to attend and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both the purposes.

(3) A person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

(4) A person may be summoned to produce a document , without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such documents to be produced instead of attending personally to produce the same.

(5) Every summons shall be served by sending it by post to the person, for whom it is intended or in such other manners as the Commission may direct.

(6) The provisions of sub rules (1) to (5) shall apply, as far as may be, to every other process issued by a Commission.

5. Procedure of Inquiry –

(1) A Commission may sit in public or in private as it thinks fit: Provided that a Commission shall sit in private on request being made by the Central Government in that behalf.

(2) A Commission shall, as soon as may be after its appointment-

(a) Issue a notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry, to furnish to the Commission a statement relating to such matters as may be specified in the notice.

(b) Issue a notification, to be published in such manner as it may deem fit, inviting all persons acquainted with the subject matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification.

(3) Every statement furnished under clause (a) of sub rule (2) shall be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement.

(4) Every person furnishing a statement under clause (a) of sub rule (2) shall also furnish to the commission along with the statement a list of the documents, if any, on which he proposes to rely and forward to the Commission, wherever practicable the originals or true copies of such of the documents as may be in his possession or control and shall state the names and address of the person from whom the remaining documents may be obtained.

(5) (a) A Commission shall examine all statements furnished to it under clause (b) of sub rule (2) and if, after such examination, the Commission considers it necessary to record evidence, it shall first record the evidence, if any , produced by the Central Government and may thereafter record evidence in such orders as it may deem fit.

(i) The evidence of any person who has furnished a statement under clause (a) of sub rule (2) and whose evidence the Commission having regard to the statement, consider relevant for the purpose of the inquiry and

(ii) The evidence of any person whose evidence, in the opinion of the Commission, is relevant to the inquiry.

Provided that the Commission may dispense with the attendance of any person for the purpose of giving evidence before it, if in its opinion-

(i) Such attendance cannot be enforced except by causing undue hardship or inconvenience to that person.

(ii) Such attendance should be dispensed with for any other sufficient reason to be recorded by it in writing.

(b) If, after all the evidence is recorded under clause (a) of sub rule (5), the Central Government applies to the Commission to recall any witness already examined or to examine any new witness, the Commission, if satisfied that it is necessary for the proper determination of any relevant fact to do so, shall recall such witness or examine any such new witness.

(6) [Note: Subs by G.S.R. 987, dated 29 th August, 1974.] Travelling and other expenses as the Commission may deem reasonable shall be paid to a person who is communed to assist the Commission at the stage of the preliminary investigation or to give evidence or to produce documents before a Commission.

(7) The Commission shall have the power of a civil court to make cola investigation, either personally or through any person, duly authorized by it into any matters falling within its terms of reference.

(8) A Commission shall have the power to regulate its own procedure in respect any matter for which no provision is made in these Rules.

6. Appointment of Assessors-

(a) The Central Government or, with the previous approval of the Central Government, a Commission, may, from time to time, appoint one or more assessors to assist and advise the Commission on any matter connected with the inquiry.

(b) It shall be the duty of the assessors to assist and advise the Commission on any matter which the Commission may consult them in the course of its inquiry.

Provided that the advise tendered by the assessor shall not be binding on the Commission.

(c) The Commission shall have the power to regulate the manner in which it may consult the assessors.

(d) [Note: Subs by G.S.R. 987, dated 29 th August, 1974.] The Central Government or, with the previous approval of the Central Government, the Commission, may determine the traveling allowance, daily allowance and other incidental expenses that may be paid to such assessors.

7. Retention of Records-

The report of a Commission and the papers relating to its secretariat, its establishment matters and all other matters handled by or in the Commission including the evidence tendered before the Commission shall be preserved intact by the Commission and shall be remitted with the Report of the Commission.

8. Repeal and savings-

(1) The Commission of Inquiry (Assessors) Rules, 1954, the rules for the issue and service of summons by the Commission of Inquiry, published with the notification of the Government of India in the Ministry of Home Affairs, No. 16/1/55-Judicial (1) dated 27.7.1995, the Central Commissions of Inquiry (Procedures) Rules, 1960, and Central Commissions of Inquiry (Local Investigation) Rules, 1970 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of any of the Rules referred to in sub-rule (1) shall be deemed to have been done or taken under the corresponding provisions of the Commissions of Inquiry (Central) Rules, 1972.