

and the order of dismissal, dated the 28th of March, 1961 be quashed and the dismissal of the appellant held to be illegal. In the circumstances of the case there will be no order as to costs.

G. P. Govil
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Union of India

Kapur, J.

D. K. MAHAJAN, J.—I entirely agree.

Mahajan J

E.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J., and Mehar Singh, J.

SHUSHIL KUMAR SANGHI,—Appellant.

versus

R. R. KINI,—Respondent.

F.A.O. 4-D of 1965.

Companies Act (I of 1956)—Ss. 10-A, 235 and 240—Investigation ordered by Central Government into affairs of a company—Officer of the company refusing to answer questions put to him by Inspector on the ground that criminal charge is pending against him in a Court—Constitution of India (1950)—Art. 20(3)—Protection under—Whether can be claimed on vague allegations—Jurisdiction of Tribunal constituted under S. 10-A of Companies Act (I of 1956)—Extent of—Two inspectors appointed to carry out investigation jointly or severally—One of them alone—Whether can act.

February, 22nd

1965

Held, that the prosecution under Article 20(3) of the Constitution of India cannot be claimed by a witness on the vague allegation that the investigation into the affairs of the company that is being conducted by the Inspectors appointed by the Central Government under section 235 of the Companies Act, 1956, may have some bearing or is likely to have bearing on certain aspects of the prosecution in the criminal case pending before a magistrate, without saying definitely what aspect or what material of that case is being made subject-matter of the questioning in the investigation.

Mehar Singh, J.

Held, that the Tribunal constituted under section 10-A of the Companies Act, 1956, by virtue of section 10-A (1)(b) exercises the powers of the Court under section 240 of the Act. Under sub-section (3) of section 240 the Inspector can only certify the refusal of the party 'to appear before him personally' and 'to answer any question which is put to him', and the Tribunal, on the application of the Ins-

pector, can only order the appearance of the party and require him 'to answer any questions which may be put to him by the Inspector'. This is the limitation of the jurisdiction of the Tribunal. It can either direct the party to answer any questions put to him by the Inspector or dismiss the application of the Inspector with regard to any particular question or questions. But under this provision it has no jurisdiction to stop an investigation ordered by the Central Government under section 235 of the Act. The High Court has no power to do either while hearing an appeal from an order of the Tribunal.

Held, that where two Inspectors are appointed to carry out the investigation jointly and severally, one of them alone is competent to act, otherwise, there is no point in empowering them to carry out investigation jointly and severally if every time they are compelled to act jointly. The object of thus appointing two Inspectors with power to conduct the investigation jointly and severally is apparent that each one of the Inspectors may be able to carry on a part of the investigation by himself on a particular aspect of the affairs of the company.

First Appeal under Section 10-D of the Companies Act, 1956, as amended by Act 53 of 1963 against the order of Companies Tribunal, Delhi, dated 26th November, 1964, granting the petitioner's application and ordering the respondent to answer such questions as may be put to him by the petitioner with regard to the affairs of Asia Udyog Private Limited from and after 13th February, 1953.

R. L. AGGARWAL, R. L. KOHLI AND P. N. CHADHA, ADVOCATES for the Petitioner.

VIVEN DE, ADDITIONAL SOLICITOR-GENERAL, WITH S. N. SHANKAR, ADVOCATES for the Respondent.

JUDGMENT

Mehar Singh, J. MEHAR SINGH, J.—In this appeal under section 10-D of the Companies Act, 1956 (Act 1 of 1956), hereinafter to be referred as 'the Act', by Sushil Kumar Sanghi appellant from the order, dated November, 26, 1964, of the Companies Tribunal made under section 240, read with section 10-A(1) (b), of the Act accepting the application made by the respondent, Mr. R. R. Kini, who has been appointed as Inspector by the Central Government to investigate into the affairs of Asia Udyog (Private) Limited, hereinafter to be referred as 'the Udyog Company' under section 235(c) of the Act, and ordering the appellant 'to answer such questions as may be put to him by the petitioner (respondent) with regard to the affairs of the Udyog Limited from

and after 13th February, 1953', the main question for consideration is whether the appellant is or is not entitled, in the facts and circumstances of the case, to protection of Article 20(3) of the Constitution, which says that 'no person accused of any offence shall be compelled to be a witness against himself.'

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On report by the Registrar of Companies, Delhi, under sub-section (6) of section 234 of the Act concerning the affairs of the Udyog Company, the Central Government being of the view that it was desirable that inspectors be appointed to investigate into the affairs of that company and to report thereon, it, by notification No. 2(9)-CL.I/62, of April 19, 1963, appointed Mr. R. R. Kini (respondent), Legal Adviser, and Mr. S. M. Dugar, Senior Accounts Officer, in the department of Company Law Administration, as Inspectors to investigate into the affairs of that company for the period from January 1, 1953, to date and even for the period prior thereto, should the Inspectors consider necessary to do so, and to report thereon pointing out *inter alia* all irregularities and contraventions in respect of the provisions of the Act or of the Indian Companies Act, 1913, or of any other law for the time being in force and the person or persons who are responsible for such irregularities and contraventions. The Inspectors were to complete their investigation and make the report within three months from the date of the notification, but as that was not possible, that time was extended from time to time.

It was Mr. R. R. Kini alone, who took up the investigation of the Udyog Company. The appellant was asked to appear before him on July 16, 1964, which he did, and on that day a part of his statement was recorded. On the next day, that is to say on July 17, 1964, when the appellant appeared again to continue his statement, he moved two applications objecting to being questioned by the Inspector, which applications were dismissed on July 31, 1964. The appellant was to appear before the Inspector on August 15, 1964, to continue his statement, but on August 13, he wrote informing the Inspector that he was not going to appear any further before him. This he seems to have also conveyed to him orally.

On that the Inspector moved an application before the Tribunal under sub-section (3) of section 240, read with

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section 10-A(1)(b), of the Act certifying the refusal of the appellant to appear before him and to answer the questions in the investigation of the affairs of the Udyog Company. The appellant raised a large number of objections before the Tribunal to that application of the Inspector. The Tribunal repelled all the objections and made an order as already stated above. In this appeal by the appellant it is that order of the Tribunal which is being questioned.

A charge-sheet is pending in a criminal case against the appellant along with a number of others in the Court of the District Magistrate of Delhi in connection with conspiracy to commit criminal breach of trust in regard to the funds of Dalmia Jain Aviation Limited of which the appellant was one of the directors and for commission of various offences in pursuance of the conspiracy. A copy of the charge-sheet is annexure 'R. 2' in which there are a number of charges for offences under section 120-B, read with section 409, and sections 409, 465, 467 and 477-A of the Penal Code. Items 3 and 36 in the charge-sheet concern the appellant. Those items are—

“3. Investigations made by me have revealed that a criminal conspiracy having for its objects the commission of the criminal breach of trust of the funds and assets of Dalmia Jain Airways Limited, Delhi, and the offences for forgery and falsification of accounts came into being in or about 1946 at Delhi and continued to exist till 1953, during which period its ramification spread over other places in India. All the accused mentioned above were parties to the criminal conspiracy.

36. On 25th March, 1953, the Board of Directors of Dalmia Jain Aviation Limited consisting of R. Sharma (since dead), S. K. Sanghi accused No. 18, G. Ramachandran accused No. 19, authorised S. N. Dudani accused No. 15 to dispose of the records of Dalmia Jain Airways Limited and all the important and incriminating records were done away with.”

It is said that previously the name of the Udyog Company was Dalmia Jain Aviation Limited. One of the allegations

against the accused persons, including the appellant, in that case is said to be that the funds of Dalmia Jain Airways Limited were siphoned away through Dalmia Jain Aviation Limited, now the Udyog Company, and then the offence of breach of trust of the funds and assets of Dalmia Jain Airways Limited was committed by the accused persons. The learned counsel for the appellant has urged that the object of the questions in the investigation by the Inspector has been to show inter-connection between Dalmia Jain Airways Limited and Dalmia Jain Aviation Limited so as to bring into picture the offence of misappropriation of funds and assets of Dalmia Jain Airways Limited by among others the appellant. He then points out that answers so obtained from the appellant can be used as evidence against him under sub-section (5) of section 240 of the Act, which is in these terms.....

‘Notes of any examination under sub-section (2) or (4) shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him’. The learned counsel stresses that the nature of the questions that were being asked from the appellant by the Inspector revealed intimate and direct connection between the subject-matter of the prosecution that is pending against the appellant in the Court of the District Magistrate and the nature of the investigation that is being conducted by the Inspector. In this way the appellant was placed in a situation in which he was being compelled to answer questions, the answers to which would incriminate him for offences in the pending criminal case against him and would be available as evidence against him under sub-section (5) of section 240 of the Act. What the learned counsel has urged is that there has been contravention of sub-article (3) of Article 20. This in substance is the main contention on the side of the appellant in this appeal. No question was placed before the Tribunal, and none has been placed before this Court, that the Inspector asked the appellant to show the bearing of any such question on the charges against the appellant in the criminal case pending against him before the District Magistrate. Obviously in the absence of the form and nature of the question objected to, it is next to impossible to reach a conclusion whether or not it may have any connection with that prosecution and tends to be an incriminating question for offences, subject-matter of that prosecution or for that matter of any other offence.

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Shushil Kumar The appellant gave answers to all questions before the
 R. R. Kini Inspector until before his refusal to continue with his
 v. statement. To that stage he took no objection to the
 R. R. Kini nature and character of the questions. The learned counsel
 Mehar Singh, J. for the appellant has pointed out that the appellant was un-
 represented by a legal adviser before the Inspector and he
 was not in a position to take such a technical objection to
 the nature and character of the questions that were being
 put to him. It is said that there has been a refusal on the
 part of the Inspector to allow the appellant legal aid of a
 counsel. But the learned Additional Solicitor-General has
 stated at the bar that there would be no objection by the
 Inspector to the presence of a counsel for the purpose of
 aiding and advising the appellant to raise objections to the
 incriminating nature and character of any question put to
 him. But of course such assistance will only be confined to
 such advice. The learned counsel for the appellant has
 further referred to the final order made by the Tribunal
 that the appellant will answer such questions as may be
 put to him by the Inspector with regard to the affairs of the
 Udyog Company and he says that in this there is no reser-
 vation that the questions are to be subject to the limitation
 as in sub-article (3) of Article 20. This, however, is an
 approach without substance because every Tribunal which
 has the power to examine a person in any connection must
 keep in view the provisions of that Article. Merely because
 the Tribunal has not made reference to that Article in the
 closing sentences of its order does not mean that the Inspec-
 tor is not to have regard to the provisions of that Article.
 As has been pointed out, there was no specific question
 before the Tribunal with regard to which it could consider
 the applicability or otherwise of sub-article (3) of Article 20.
 A vague allegation was made before it that the questions
 that were likely to be put to the appellant would have the
 tendency to contravene that Article, but apparently the
 Tribunal could not possibly have taken note of any such
 vague allegation and passed an effective order. What was
 contended before it, and has been reiterated here, is that in
 view of the pending prosecution of the appellant in the
 criminal case before the District Magistrate, the investiga-
 tion by the Inspector be stopped altogether because its
 ramifications are likely to almost cover the same field as
 that prosecution. This again is vague and it has not been
 shown how that is so. It has been said that copies of a
 large number of documents have been given to the accused

persons in that criminal case and a very large number of witnesses are cited and it is not practical for the appellant to state in definite detail what aspect of the prosecution in that criminal case is parallel to what part of the investigation before the Inspector. This surely in itself gives a reply to the argument of the learned counsel for the appellant that the Tribunal could not possibly have made a blanket order stopping the enquiry on such a vague approach upon which it is impossible to bring to bear sub-article (3) of Article 20. There is no manner of applying that Article except to something specific and definite from which it can be made out that what is being sought from the party will provide evidence of an incriminating nature against him. Particularly is this so with regard to an oral statement that a party, as the appellant in this appeal, is required to make under the law. The learned counsel for the appellant has then suggested that the Inspector should prepare a list of questions before-hand and give the list to the appellant to enable him to know which questions are likely to incriminate him so that he may object to the same and may not give answers. This is an extraordinary suggestion, for no investigation can possibly be conducted in this manner. It is not possible for the Inspector to prepare a list of questions for an obvious reason that the run of the questions will depend to a very great extent upon the manner in which the answers are given and the information sought in question is supplied. The learned counsel has also made reference to certain parts of the Report of the Commission of Inquiry, commonly known as Bose Commission Report, and in it reference to Dalmia Jain Aviation Limited, the previous name of the Udyog Company, at pages 366, 417 and 419. The object of this has been that there has already been some kind of investigation with regard to the Udyog Company when its name was Dalmia Jain Aviation Limited. It has not been quite clear how any reference to that Company in the report of the Bose Commission affects the power of the Central Government under section 235 of the Act to appoint Inspectors to investigate the affairs of the Udyog Company or the jurisdiction of the Inspector to do so under the succeeding provisions of the Act. It is thus clear that there is nothing in the present case upon which sub-article (3) of Article 20 can operate and it cannot possibly be applied to a vague allegation that the investigation that is being conducted by the Inspectors may have some bearing or is likely to have

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Shuhil Kumar bearing on certain aspects of the prosecution in the
 Sanghi criminal case pending before the District Magistrate
 v. against the appellant, without saying definitely what aspect
 R R. Kini or what material of that case is being made subject-matter
 Mehar Singh, J. of the questioning in the present investigation. The
 Tribunal because of section 10-A(1)(b) exercises the
 powers of the Court under section 240 of the Act and the
 relevant sub-section is sub-section (3). For the present
 purpose this much of it is material—'if any such person
 fails without reasonable cause or refuses—(b) to appear
 before the inspector personally when required to do so
 under sub-section (2) or to answer any question which is
 put to him by the inspector in pursuance of that sub-
 section; the inspector may certify the failure or refusal
 under his hand to the Court and make an application to the
 Court to hold an enquiry into the case; and the Court may,
 thereupon, after taking such evidence, if any, as may be
 produced against or on behalf of the alleged offender and
 hearing his explanation, if any, make an order for the
 production by him before the inspector of all such books
 or papers within a date to be specified in the order or re-
 quiring such person to answer any question which may be
 put to him by the inspector'. It is evident that in the facts
 of the present case the Inspector could only certify the
 refusal of the appellant 'to appear before him personally'
 and 'to answer any question which is put to him', and the
 Tribunal could only order the appearance of the appellant
 and require him 'to answer any questions which may be
 put to him by the Inspector.' This is the limitation of the
 jurisdiction of the Tribunal. It could either direct the
 appellant to answer any questions put to him by the Ins-
 pector or dismiss the application of the Inspector with
 regard to any particular question or questions. But under
 this provision it has no jurisdiction to stop an investigation
 ordered by the Central Government under section 235 of
 the Act. This Court has no power to do so either, hearing
 an appeal from an order of the Tribunal.

It has then been further contended by the learned
 counsel for the appellant that the Tribunal, in spite of the
 application of the appellant in this behalf, did not take any
 evidence in support of the position taken by the appellant
 in reply to the application of the Inspector. When asked
 what possible type of evidence had the appellant in mind
 when making such an application, the learned counsel has,

in the face of the vague allegations detailed above, had to fall back into saying that the appellant would have led evidence connected with the criminal case pending against him in the Court of the District Magistrate, but the Tribunal could not be turned into something like a parallel Court trying the same thing as the District Magistrate has to try in that case. This approach on the facts is entirely misconceived. In the face of the vagueness of the allegation on the side of the appellant that the questions which the Inspector will put to him, without knowing what questions the Inspector will put to him or what will be the trend of those questions, would be likely to incriminate him, it was quite impossible for the appellant to lead any evidence with regard to the same or for the Tribunal to permit the appellant to do so. The only manner in which evidence could have been attracted and even for that matter sub-article (3) of Article 20 could come into consideration was to deal with specific and definite questions when put by the Inspector to the appellant. As a question is put and if sub-article (3) of Article 20 is attracted, an objection can be taken to a question and then the objection can be followed up. It has already been pointed out that the learned Additional Solicitor-General has said that the Inspector will allow the facility of the presence of a legal adviser to the appellant to help him to know whether such an objection ought or ought not to be raised with regard to a particular question.

Another argument urged by the learned counsel on behalf of the appellant is that the Inspector, Mr. R. R. Kini, is a Legal Adviser in the Company Law Administration, and it is against principles of natural justice that an employee in the Company Law Administration and a Legal Adviser to the Registrar of Companies should be conducting the investigation. This is a rather astounding argument because all investigations are on the side of the Government by and large conducted by Government Officials or Government agencies and it is not clear how any principle of natural justice intervenes to stop such investigations. The argument is, to say the least, without any basis.

The last argument urged by the learned counsel is that while the notification appointed two Inspectors to carry on the investigation jointly or severally, but only one Inspector has done so, and that one Inspector could not conduct

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either the investigation or approach the Tribunal as he has done. The learned counsel is of the opinion that both the Inspectors must have acted in unison and as a body. This is obviously incorrect, for there would be no point in empowering them to carry out the investigation jointly and severally if every time they are compelled to act jointly. The object of thus appointing two Inspectors with power to conduct the investigation jointly and severally is apparent that each one of the Inspectors may be able to carry on a part of the investigation by himself on a particular aspect of the affairs of the company. So that nothing turns upon this argument.

There were, as stated, a number of other arguments before the Tribunal, none of which has been urged at the hearing here, and all the arguments that have been urged have been found to be unsound and unsupportable. This appeal fails and is dismissed with costs.

Falshaw, C. J.

D. FALSHAW, C.J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before S. B. Kapoor and I. D. Dua, JJ.

NIRMAL SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Merit No. 2623 of 1964

1965

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Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 13-O—Panchayat election—Improper reception of a vote or non-compliance with the provisions of the Act or the Rules—Whether sufficient for setting aside an election—Punjab Gram Panchayat Election Rules (1960)—Rules 16 and 34(b)—Non-compliance of a direction under Rule 16—Whether vitiates election—Official mark to be placed on ballot-papers not conveyed to Presiding Officer—Ballot-papers issued and votes cast without official mark—Whether improper and election liable to be set aside—Election—petition—Nature of—Authority trying an election petition—Duties of—Constitution of India (1950)—Article 226—Jurisdiction of the High Court under—Nature of—Finding of fact—Whether can be interferred with.