Supreme Court of India
Dr. Baliram Waman Hiray vs Justice B. Lentin And Others on 12 September, 1988
Equivalent citations: 1988 AIR 2267, 1988 SCR Supl. (2) 942
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
DR. BALIRAM WAMAN HIRAY

Vs.

RESPONDENT:
JUSTICE B. LENTIN AND OTHERS

DATE OF JUDGMENT12/09/1988

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
SHARMA, L.M. (J)

CITATION:
1988 AIR 2267 1988 SCR Supl. (2) 942
1988 SCC (4) 419 JT 1988 (4) 265
1988 SCALE (2)688

ACT:
Commission of Inquiry Act , 1952: Section 3--Commission of Inquiry--Constituted under Act--Whether 'Court' for purposes of Section l95(1)(b) Cr. P.C. 1973.
%
Criminal Procedure Code, 1973-- Section 195(1)(b)-Commission of Inquiry' constituted under Commission of Inquiry Act, 1952--Whether a 'Court'.
Words and Phrases: 'Court'--Meaning of.

HEADNOTE:
On February 21, 1986 the State Government of Maharashtra appointed Shri Justice B. Lentin as a one-man Commission of Inquiry to probe into the death of 14 patients in the government run J.J.B. Hospital between 22.1.1986 and 7.2.1986 after they were administered contaminated glycerol, and to fix responsibility. The inquiry revealed the existence of a corrupt and venal nexus between the drug firms, the delinquent Food & Drugs Administration and hospital staff on the one hand, and the appellant, some other persons and certain Government officials on the other. The Commission's report was an indictment of the State's public health system.

The Commission having found the evidence given by the appellant self-contradictory, issued a show-cause notice to him as to why he should not be prosecuted for the offence of giving false evidence on oath under s. 193 of the Indian Penal Code, 1860 read with s. 340 of the Code of Criminal Procedure, 1973. After considering the appellant's objections, the Commission directed filing of a complaint under ss. 193 and228 of I.P.C. The appellant filed a petition in the High Court assailing the legality and propriety of the order of the Commission directing filing of the complaint, and the same was dismissed by the High Court.

Before this Court, it was contended on behalf of the appellant that (1) the Commission could not be deemed to be a Court for the purposes of s. 195(1)(b) of the Code of Criminal Procedure unless declared by the Commission of Inquiries Act itself, as stipulated in sub-s. (3) of s. 195,

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which provides that in cl. (b) of sub-s. (1), the term 'Court' means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this Section; (2) the Commission of Inquiry appointed by the State Government was merely a fact-finding body appointed by the Government for the 'information of its mind', and the mere fact that the procedure adopted was of a legal character and it had the power to administer an oath would not impart to it the status of the Court and therefore was not a 'Court' for the purposes of s. 195(1)(b) of the Code; (3) the question was not whether the appellant could be prosecuted for perjury for giving false evidence which was an offence punishable under section 195(1)(b), but whether the Commission was a 'Court' for the purposes of s. 195(1)(b); (4) that sub-s. to put an end to the controversy, and this was nothing but 'legislative declaration of the law' contrary to the law declared by this Court in Lalj Haridas case, and a number of statutes contain such a provision in accordance with the existing legislative practice.

The Advocate-General appearing on behalf of the State contended that (1) the inclusive part of the definition of 'Court' in s. 195(3) of the Code was ex abundanti cautela and was merely declaratory of the law, and (2) the first part of sub-s. (4) of s. 5 of the Act satisfied the requirements of the inclusive part of the definition of 'Court' as contained in sub-s. (3) of s. 195 of the Code.

Allowing the appeal, it was,

HELD: (1) It could not be doubted that sub-s. (3) of S. 195 of the Code had been enacted by Parliament to implement the recommendations of the 41st Report of the Law Commission to remedy the uncertain state of law due to conflict of opinion between different High Courts as to the meaning of the word 'Court' in s. 195(1)(b) and to that extent the

introduction of the inclusive clause in the definition of 'Court' in sub-s. (3) of s. 195 had brought about a change in the law. [966D]

(2) Law must be definite, and certain. If any of the features of the law could usefully be regarded as normative, it was such basic postulates as to the requirement of consistency in judicial decision-making. It was this requirement of consistency that gave to the law much of its rigour. At the same time, there was need for flexibility.[968F-G]

(3) A Commission of Inquiry was fictionally a Civil

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Court for the limited purpose of proceeding under s. 482 of the old Code or s. 345 of the present Code. A fortiori the legal fiction contained in sub-s. (5) of s. of the Act which related to the proceedings before the Commission was necessarily confined to offences that were punishable under ss. 193 and 228 of the Indian Penal Code and did not extend beyond that. [970F-G]

(4) A Commission of Inquiry was not a Court properly so called. A Commission is obviously appointed by the appropriate Government 'for the information of its mind' in order for it to decide as to the course of action to be followed. It was therefore a fact-finding body and was not required to adjudicate upon the rights of the parties and has no adjudicatory function. The Government was not bound to accept its recommendation or act upon its findings. The mere fact that the procedure adopted by it was of a legal character and it had the power to administer an oath would not impart to it the status of a Court. [972D-E]

(5) Parliament in its wisdom whenever thought it fit had inserted a special provision for deeming a tribunal to be a Court for the purposes of s. 195(1)(b) but had left the other enactments like the Commission of Inquiry Act untouched although sub-s. (3) of s. 195 had been on the Statute Book for the last over 14 years. [965D-E]

(6) The judgment will not however prevent the State Government from launching a prosecution against the appellant for commission of the alleged offences under ss. 193 and 228 I.P.C. if otherwise permissible in law. [977E-F]

Lalji Haridas v. The State of Maharashtra [1964] 6 SCR 700; M.V. Rajwade v. Dr. S.M. Hasan, ILR (1954) Nagpur 1; Brajnanandan Sinha v. Jyoti Narain, [1955] 2 SCR 955; Puhupram & Ors. v. State of Madhya Pradesh, [1968] MPLJ 629; Balakrishnan v. Income-Tax Officer, Ernakulam, [1976] KLT 561; Jagannath Prasad v. .State of Uttar Pradesh, [1963] 2 SCR 650; Virinder Kumar Satyawadi v. The State of Punjab , [1955] 2 SCR 1013; Balwant Singh & Anr. v. L.C. Bharupal, I.T.O., New Delhi, [1968] 70 ITR 89; Chandrapal Singh v. Maharaj Singh, [1982] 1 SCC 466; Bengal Immunity Co. Ltd. v. Union State of Bihar, [1955] 2 SCR 608; R. M.D. Chamarbaugwalla v. Union of India, [1957] SCR 930; Commissioner of Income-tax Madhya Pradesh & Bhopal v. Sodra

Devi, [1958] SCR l; St. Aubyn v. Attorney General, LR (1952) AC 15; Shell Co. of Australia v. Federal Commissioner of Taxation, LR (1931) AC 275; Smt. Ujjam Bai v. State of Uttar Pradesh, [1961] 1 SCR 778; M.M. khan v. Emperor, ILR (1931) 12 Lah. 391 and In re. Maharaja Madhava Singh LR (1905) 31 IA 239.

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 114 of 1988.

From the Judgment and Order dated 11.8.1987 of the Bombay High Court in Criminal Writ Petition No. 733 of 1987. Dr. Y.S. Chitale, Shambhu Prasad Singh, Mrs. Jayshree Wad, Mrs. Aruna Mathur, Manoj Wad and Vijay Tulpule for the Appellant.

A.S. Bobde, Advocate General for the State of Maharashtra, A.M. Khanwilkar and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by SEN, J. This appeal by special leave directed against the judgment and order of a Division Bench of the Bombay High Court dated August 11, 1987 raises a question of far- reaching importance. The question is whether a Commission of Inquiry constituted under s. 3 of the Commissions of Inquiry Act, 1952 (hereinafter referred to as the 'Act') is a "Court" for purposes of s. 195(1)(b) of the Code of Criminal Procedure, 1973.

We had the benefit of hearing Dr. Y.S. Chitale, learned counsel appearing on behalf of the appellant Dr. Baliram Waman Hiray, who at one time was the Health Minister of Maharashtra, and Shri A.S. Bodbe, learned counsel appearing on behalf of the State Government, as to the purport and effect of the inclusive of sub-s. (3) of s. 195 of the Code which provides that in cl. (b) of sub-s.(1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

In Lalji Haridas v. The State of Maharashtra & Anr., [1964] 6 SCR 700, a Constitution Bench of this Court by a majority of 3:2 held that the proceedings before an Income- tax Officer under s. 37(4) of the Indian Income-tax Act, 1922 were judicial proceedings under s. 193 of the Indian Penal Code and such proceedings must be treated as proceedings in any Court for the purposes of s. 195(1)(b) of the Code. We thought that the controversy had been set at rest by the decision of the Constitution Bench in Lalji Haridas' case. Dr. Chitale, learned counsel however contends that there is a change in the law because of the introduction of sub-s. (3) of s. 195 of the Code and points out that Parliament has brought about the change to implement the 41st Report of the Law Commission and relies PG NO 946 on paras 15.90, 15.93, 15.94 and 15.99. In the course of his submissions, he has brought to our notice the words in parenthesis added by the Finance Act, 1985 introducing the following change in s. 136 of the Income-tax Act, 1961 w.e.f. April 1, 1974 from which the Code of Criminal Procedure, 1973 came into force. S. 28 of the Finance Act amended s. 136 of the Income-tax Act,

and it was provided that the words "and every income-tax authority shall be deemed to be a Civil Court for the purposes of s. 195 but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973", shall be inserted and shall be deemed to have been inserted at the end w.e.f. 1st day of April, 1974. Dr. Chitale's contention is that unless there was a similar change brought about in the Commissions of Inquiries Act, the Commission cannot be deemed to be a Court for the purposes of s. 195 (1)(b) of the Code. We find great difficulty in dealing with the question involved in this appeal because many diverse problems will have to be considered.

In order to appreciate the point involved, it is necessary to state a few facts. The State Government of Maharashtra by a notification dated February 21, 1986, issued under s. 3 read with s. 5(1) of the Commissions of Inquiry Act, 1952 appointed Shri Justice B. Lentin, Judge of the High Court of Bombay as a one-man Commission of Inquiry to probe into the deaths of 14 patients in the government- run Jamsetjee Jee Bhoi Hospital, Bombay between January 22, 1986 and February 7, 1986 after they were administered contaminated glycerol. The aforesaid notification of the State Government was to the effect:

> "MEDICAL EDUCATION AND DRUGS DEPARTMENT Mantralaya, Bombay 400 032. dated 21st February, 1986. COMMISSIONS OF INQUIRY ACT, 1952.

No. JJH. 2088/712/MED-4--Whereas certain deaths of patients alleged to be due to drug reaction, occurred in Neuro Surgery, Neurology, Opthalmology and Nephrology Departments of J.J. Hospital, Bombay, during January- February 1986:

And whereas the Government of Maharashtra is of the opinion that it is necessary to appoint a Commission of Inquiry under the Commissions of Inquiry Act, 1952 (60 of PG NO 947 1952) for the purpose of making an inquiry into the causes and the circumstances leading to the aforesaid incidents of death at J.J. Hospital, Bombay, being definite matters of public importance and for making a report thereon to the State Government:

Now, therefore, in exercise of the powers conferred by section 3 and sub-section (1) of section 5 of the said Act and of all other powers enabling it in this behalf, the Government of Maharashtra hereby appoints a Commission of Inquiry consisting of Shri Justice B. Lentin, Judge of the High Court of Judicature at Bombay, to inquire into and report on the causes and circumstances leading to the occurrence of the said deaths in Neuro Surgery, Neurology, Opthalmology and Nephrology Departments of J.J. Hospital, Bombay, during January-February 1986; and particularly--

*** *** *** xxx xxx xxx The Government of Maharashtra hereby directs that having regard to the nature of inquiry to be made by the Commission and other sub-section (4) and sub-section (5) of section 5 of the said Act shall apply to the said Commission. The Commission shall submit its report to State Government within a period of 3 months from the date of publication of this Notification in the Official Gazette. By order and in the name of the Governor of Maharashtra.

J.P. BUDHAVANT Deputy Secretary to Government"

By the terms of reference, the Commission was required inter alia to enquire into and report on the causes and circumstances leading to the occurrence of the unfortunate deaths and to fix the responsibility of the persons and officers responsible for the purchase and supply of sub- standard drugs on the basis of the mounting evidence gathered by Lentin Commission. There emerged a corrupt and venal nexus between the drug firms engaged in manufacturing and supply of sub standard and adulterated drugs and the PG NO 948 delinquent Food & Drugs Administration and Hospital staff on the one hand and the appellant and Bhai Sawant, two former Health Ministers and certain Government officials on the other. In the course of its investigation, it discovered that there were as many as 582 grossly defaulting drug companies whose products, including the crucial life-saving drugs, were sub-standard. The Commission's report was an indictment of the State's public health system and constant ministerial interference. It was particularly severe on the machinations of Bhai Sawant, the then Health Minister who, the Commission observed, had a hairbreadth escape from being served with a notice to show cause why he should not be prosecuted for perjury under ss. l93 and 228 of the Indian Penal Code, 1860. The Court issued show cause notices on four persons including the appellant Dr. Baliram Waman Hiray for giving false evidence in an attempt to cover up the charges of rampant corruption brought against them. The State Government placed the report of the Lentin Commission before the State Legislature on March 30, 1988 and accepted its recommendations. One of the recommendations was that a separate enquiry be held by a retired High Court Judge into the charges of corruption against the appellant Dr. Baliram Waman Hiray and Bhai Sawant, the two former Health Ministers and in particular of the misfeasance and malfeasance on the part of one Dr. S.M. Dolas who was the Food & Drugs controller of the State who had an unprecedented long time for as many as 15 years and other delinquent officers of the concerned departments holding them responsible for the deaths. The report indicted both the Health Ministers in no uncertain terms. But we are not concerned with the follow up action that the Government has taken in bringing the guilt to book. The controversy before us is limited to the question whether the Commission was a "Court" for the purposes of s. 195(1)(b) of the Code of Criminal Procedure, 1973.

On June 23, 1987 the Commission by its order directed its Secretary to issue a show cause notice to the appellant as to why he should not be prosecuted for the offence of giving false evidence on oath under s. 193 of the Indian Penal Code, 1860 read with s. 340 of the Code of Criminal Procedure, 1973,the relevant portion whereof reads:

"AND WHEREAS you are summoned by the Commission under Section 4 of the Commissions of Inquiry Act, 1952, to give evidence before it and you did give evidence before it on PG NO 949 22nd April 1987, 23rd April 1987, 24th April 1987, 27th April 1987, 28th April 1987, 29th April 1987, 4th May 1987, 5th May 1987, 8th June 1987 and 9th June 1987;

****** ****** ****** AND WHEREAS the Commission is prima facie of the opinion that it is expedient in the interests of justice that an inquiry should be made into the offence under Section 193 of the Indian Penal Code referred to in clause (b) of sub- section (1) of Section 195 of the Criminal Procedure Code which appears to have been committed by you in or in relation to the proceedings before this Commission;

***** ****** NOW THEREFORE TAKE NOTICE that the Hon'ble Mr. Justice B. Lentin, Commission of Inquiry, has fixed this Notice for hearing on Friday, the 26th June 1987 at 2.45 p.m., in Court Room No. 37, First Floor, Main High Court Building, Bombay 400 032, when you are required to appear either in person or by an Advocate to show cause, if any, why proceedings should not be initiated against you as hithertofore stated for the offence ot giving false evidence before the Commission." It was stated in the notice that the appellant gave self- contradictory answers specified in columns 'A' and 'B' in Schedule I, one of which had necessarily to be false. The relevant excerpts of ss. 191 and 193 of the Indian Penal Code. s. 340 of the Code of Criminal Procedure and ss. 4(a), 5(5) and 6 of the Commissions of Inquiry Act were set out in Schedule II. In response to the notice, the appellant appeared through counsel and showed cause. Amongst other grounds, the appellant contended, firstly, that in law the appellant's evidence would not technically constitute perjury and even if it were so. this was not a fit case where in the interests of justice it was expedient that an inquiry should be made against the appellant into the alleged offence under s. 193 of the Indian Penal Code. referred to in cl. (b) of sub-s. (1) of s. 195 of the Code of Criminal Procedure which appeared to have been committed in or in relation to the proceedings before it Secondly, the Commission of Inquiry was not a Court for the purposes of s. 195(1)(b) and s. 340 of the Code. It was stated that while perjury before the Commission was doubt punisable, it was not for the Commission to give a finding in terms of s. 340, PG NO 950 or to file a complaint, but for 'the Government or a public spirited person' to do so. The Commission by its well- considered order dated July 7,1987 repelled each of these contentions and held that the case was a fit one where in the interests of justice it was expedient to prosecute the appellant. Any other course would, in its words, 'bring the sanctity of oath and administration of justice into ridicule and contempt'. The Commission observed that the appellant was not illiterate or semi-literate person who could plead confusion of mind in the witness-box, as indeed he does not. By profession he was a medical practitioner but he played a prominent part in public life; for several years he held various portfolios as Cabinet Minister in the Government of Maharashtra, including Health. According to the Commission, he was by far the most intelligent and shrewdest witness who had given evidence before it. Unlike the other witnesses he never recanted, in an attempt to deliberately distort the truth. It went on to observe that normally, witnesses are not allowed to be represented by counsel. However in a departure from normal practice, the Commission allowed this latitude to the appellant, so that justice should not only be done but should be seen to be done to him and he had a counsel of his choice. Accordingly, the Commission directed its Secretary to take necessary steps for expeditious filing of the complaint in the proper forum and directed that the appellant should, in the meanwhile, furnish a personal bond in the sum of Rs.500 for his appearance before the Metropolitan Magistrate.

The Secretary to the Commission accordingly filed a complaint on July 17, 1987 against the appellant under ss. 193 and 228 of the Indian Penal Code being Criminal Case No. 1121((w) of 1987 in the Court of the Additional Chief Metropolitan Magistrate at Esplanade, Bombay. On the same day, the appellant filed a petition in the High Court under Art. 226 of the Constitution assailing the legality and propriety of the impugned order passed by the Commission and the consequent direction to its Secretary to lodge a complaint against the appellant for giving of false evidence. On July 20, 1987 the learned Metropolitan Magistrate issued process under s. 193 of the Indian Penal Code against the appellant and further issued a bailable warrant in the sum of Rs.500 with one surety in the like amount. A Division Bench of the High Court by its judgment dated August 117 1987

repelled the contentions advanced by the appellant and accordingly dismissed the writ petition. We may first reproduce the statutory provisions bearing on the controversy. The relevant provision of s. 191 of the Indian Penal Code, insofar as material, reads:

PG NO 951 "191. Giving false evidence--Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence."

Section 195(1)(b) of the Code of Criminal Procedure provides: " 195(1) No Court shall take cognizance--

(b)(i) of any offence .... , or in relation to, any proceeding in any Court, or except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."

Sub-s. (3) of s. 195 of the Code provides that in cl.

(b) of sub-s. (1), the term `Court' means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section. We may then set out the relevant provisions of the Commissions of Inquiry Act, 1952. The relevant provision contained in sub-s. (1) of s. 3 provides as follows:

"3. Appointment of Commission--(1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly 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 within such time as may be specified in the notification, and the Commission so appointed shall make the Inquiry and perform the functions accordingly."

Section 4 vests in the Commission the powers of a Civil Court while trying a suit under the Code of Civil Procedure and reads as follows:

PG NO 952 "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 in respect of the following matters, namely:

(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 from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed." Section 5 empowers the appropriate Government, by a notification in the Official Gazette, to confer on the Commisson additional powers as provided in all or any of the sub-ss. (2), (3), (4) and (5) of that section. Sub-ss. (4) and (5) of s. 5 of the Act, which are relevant for our purposes, provide as follows:

"(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 of presence of the Commission, the Commision may. after recording the facts constituting the offence and 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 the Criminal Procedure, 1898."

"(5) Any proceeding before the Commission shall be PG NO 953 deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860)." Section 6 provides:

"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." By s. 8 the Commission is empowered to regulate its own procedure including the time and place of its sittings etc. In support of the appeal Dr. Y.S. Chitale, learned counsel for the appellant submits that the Commission of Inquiry appointed by the State Government under sub-s. (I) of s. 3 of the Act read with s. 5 is merely a fact finding body appointed by the Government for the `information of its mind', and the mere fact that the procedure adopted is of a legal character and that it has the power to administer an oath will not impart to it the status of the Court and therefore is not a Court for the purposes of s. 195(1)(b) of the Code. He submits that it is well settled that a Commission of Inquiry has not the attributes of a Court inasmuch there is no lis before it and it has no powers of adjudication of rights. He further points out that the language of s. 6 of the Act is plain enough to show that no statement by a person before a Commisson of Inquiry `can subject him to, or be used against him' in any civil or criminal proceedings, except in a prosecution for giving false evidence before the Commission. The question before the Court, the learned counsel contends, is not whether the appellant can be prosecuted for perjury for giving false evidence which is an offence punishable under s. 195(l)(b) or for the offence of intentional insult of the Commission punishable under s. 228 of the Indian Penal Code, but whether the Commission was a `Court' for the purposes of s. 195(1)(b). A Commission by reason of s. 4 has the same powers of a Civil Court while trying a suit under the Code PG NO 955 of Civil

Procedure, 1908 but such investiture of power is for a limited purpose i.e. in respect of the matters specified therein, namely, summoning of witnesses, requiring the discovery and production of the relevant documents, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court or office, issuing commissions for examination of witnesses or documents etc. etc. Still in the very nature of things, it has not the trappings of a Court. The learned counsel relies upon the decision of the Nagpur High Court in M.V. Rajwade v. Dr. S.M. Hassan & Ors., ILR (1954) Nagpur 1 where the question arose whether the Commission of Inquiry was a `court' within the meaning of the Contempt of Courts Act, 1952 and which was referred to by this Court in Brajnandan Sinha v. Jyoti Narain, [1955] 2 SCR 955 while holding that the public under the Public Servants (Inquiries) Act, 1850 is not a `Court' within the meaning of the Contempt of Courts Act. He also relied upon the later decision of a Division Bench of the Madhya Pradesh High Court in Puhupram & Ors. v. State of Madhya Pradesh & Ors., [1968] MPLJ 629 and to a judgment of a learned Single Judge of the Kerala High Court in Balakrishnan v. Income Tax Officer, Ernakulam & Anr., [1976] KLT 561.

Dr. Chitale submits that sub-s. (3) of s. 195 of the present Code has brought about a change in the law. He traced the legislative history behind the enactment of sub- s. (3) of s. 195 and pointed out that in Jagannath Prasad v. State of Uttar Pradesh, [1963] 2 SCR 850 this Court held that a Sales Tax Officer acting under the Uttar Pradesh Sales Tax Act, 1948 was merely an instrumentality of the State for purposes of assessment and collection of tax and even if he was required to perform certain quasi-judicial functions, he was not a `Court' for the purposes of s. 195(1)(b) of the Code. Nor could he be treated to be a Revenue Court within the meaning of s. 195(2) of the Code. He then referred to the decision in Lalji Haridas v. State of Maharashtra & Anr. (supra) where a Constitution Bench by a majority of 3:2 took a view to the contrary and held that proceedings before an Income Tax Officer under s. 37 of the Indian Income Tax Act, 1922 while exercising his powers under sub-ss. (1), (2) and (3) thereof were judicial proceedings for the purposes of ss. 193, 196 and 228 of the Indian Penal Code and therefore must be treated as proceedings in any Court for the purposes of s. 195(1)(b) of the Code although the Act did not expressly said so. The learned counsel points out that the definition of `Court' in s. 195(2) as originally enacted, used the word `means' instead of the word `includes', which later was substituted by the Criminal Procedure Code (Amendment) Act, 1973. This gave rise to a controversy whether tribunals or officers PG NO 955 acting in judicial capacity or exercising quasi-judicial functions should be regarded as Courts for the purposes of s. 195(1)(b) . The substitution of the word `includes' for the word `means' in the definition, if anything, added to the difficulties of this complex issue. It necessarily gave rise to the question what else besides Civil, Revenue and Criminal Courts was covered by the generic term `Court.'. The learned counsel drew our attention to the decision of this Court in Shri Virindar Kumar Satyawadi v. The State of Punjab, [1955] 2 SCR 1013, a three-Judges Bench speaking through Venkatarama Ayyar, J. observed at p. 1018:

"It is a familiar feature of modern legislation to set up bodies and tribunals, and entrust to them work of a judicial character, but they are not Courts in the accepted sense of that term, though they may possess, as observed by Lord Sankey L.C. in Shell Company of Australia v. Federal Commissioner of Taxation, [1931] AC 275, some of the trappings of a Court."

It was then observed:

"It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act is possesses all the attributes of a Court."

In support of his submissions, Dr. Chitale relied upon the 41st Report of the Law Commission, paragraphs 15.93 to 15.101 and in particular referred to the following passage in para 15.99 where it was observed that `in any concrete case this question is bound to create problem of interpretation' and accordingly suggested a change in law he purposes of s. 195(1)(b):

PG NO 956 "We consider that for the purpose of clauses (b) and

(c), "court" should mean a civil court or a revenue court or a criminal court properly so called, but where a tribunal created by an Act has all or practically all the attributes of a court, it might be regarded as a court only if it is declared by that Act to be a court for the purposes of this section."

The learned counsel contends that Parliament accordingly enacted sub-s. (3) of s. 195 to put an end to the controversy. In view of the change in law brought about by s. 195(3), it is urged that a tribunal constituted by or under a Central, Provincial or State Act can be deemed to be a `Court' only if it is declared to be so by that Act for the purposes of s. 195. According to the learned counsel, it is now a familiar feature of recents Act to insert a specific provision deeming a tribunal to be a Court and wherever such a provision is not there, the Court cannot deem a tribunal to be a Court. According to him, it is no more a question of interpretation but one of express enactment. He accordingly contends that the majority decision in Lalji Haridas' case no longer holds the field. There appears to be considerable force in the argument . Pursuing the same line of thought i.e. there is a change of law brought about by sub-s. (3) of s. 195 of the Code, the learned counsel contends that Parliament had to step in and expressly amend s. 136 of the Income-tax Act, 1961 to put the matter beyond controversy. Sec 136 of Income-tax Act, 1961 as originally enacted provided by legal fiction that "any proceeding under this Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of ss. 193 and 228 and for the purposes of s. 196 of the Indian Penal Code, 1860". Interpreting s. 136 before its amendment, the Court has, as already stated, in Lalji Haridas' case held that the proceedings before the Income-tax Officer being deemed to be judicial proceedings under s. 193, Indian Penal Code, must be treated as proceedings in any Court for the purpose of s. 195(1)(b), Criminal Procedure Code. It also added that under the provisions of the Indian Income-tax Act of 1922, it could not be held that the Income-tax Officer is a Revenue Court, contrary to the rule laid down in Jagannath Prasad's case. In the course of his arguments, the learned counsel has brought to our notice the words in parenthesis added by s. 28 of the Finance

Bill, 1985. The Finance Bill by s. 28 brought about a change in the law and added the words: "28. Amendment of section 136 of the Income-tax Act, the PG NO 957 words and figures "and every incometax authority shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)", shall be inserted and shall be deemed to have been inserted at the end with effect from the 1st day of April, 1974."

The reason for the change is given in the Notes on Clauses in the Finance Bill, 1985 and it reads:

"Clause 28 seeks to amend section 136 of the Income-tax Act relating to proceedings before income-tax authorities to be judicial proceedings.

This amendment seeks to secure retrospectively that an income-tax authority shall be deemed to be a Civil Court for the purposes of s. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, from the date of its commencement, that is, 1st April, 1974. "

This is also evident from paragraph 119 of the Memorandum explaining provisions in Finance Bill, 1985 and it reads:

"119. Under the existing provisions. proceedings before income-tax authorities are deemed to he judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. It is proposed to provide that an income-tax authority shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. This amendment is intended to secure that prosecution proceedings for offences under the relevant provisions of the Indian Penal Code may be launched on the complaint of the concerned income-tax authority. The proposed amendment will take effect from 1st April, 1974, that is, the date from which the Code of Criminal Procedure, 1973, came into force."

According to Dr. Chitale this was nothing but "legislative declaration of the law.", contrary to the law declared by this Court in Lalji Haridas' case, which is permissible under Art. 141 of the Constitution. While the learned counsel accepts that under Art. 141 the law declared by the Supreme Court is binding on all Courts in India, in other words, the law declared by the Supreme Court is made PG NO 958 the law of the land, there is nothing to prevent the legislature to bring about a change in the law. Finally, the learned counsel also drew attention to the existing legislative practice where certain enactments constituting a Tribunal contain a provision that the Tribunal shall be deemed to be a Court for the purposes of s. 195(2) of the Code. The learned counsel referred us to s. 40 of the Indian Railways Act, 1890, s. 23 of the Workmen's Compensation Act, 1923 and s. 18 of the Payment of Wages Act, 1936. These provisions which are almost similar provide that the Tribunal under the Indian Railways Act, the Commissioner under the Workmen's Compensation Act and the authority appointed under the Payment of Wages Act shall be deemed to be a Civil Court for the purposes of s. 195 and Chapter XXXV of the Code of Criminal Procedure, 1898. Likewise, s. 18 of the Payment of Wages Act provides that the authority appointed under the Act shall be so deemed to be a Court for the purposes of s. 195 of the Code. We shall consider all these aspects in their proper context.

In his reply Shri Arvind Bobde, learned Advocate-General appearing on behalf of the State Government argued with great clarity and precision and repelled the contentions advanced on behalf of the appellant. According to the learned Advocate-General, there was no need to amend the Act merely because of the enactment of sub-s. (3) of s. 195 of the Code and the majority view in Lalji Haridas' case is binding on us and is still good law. His submissions were on these lines. While under s. 4 of the Act a Commission of Inquiry has the power of a Civil Court while trying a suit under the Code of Civil Procedure, l908 in respect of the matters enumerated therein, the legislature has not rested at that. Parliament has made express provision, by the use of a legal fiction in sub-s. (4) of s. 5 of the Act, that a Commission of Inquiry shall be deemed to be a Civil Court and has further, by the use of another legal fiction in sub- s. (5) thereof, enjoined that any proceedings before a Commission of Inquiry shall be deemed to be judicial proceedings. On a combined reading of sub-ss. (4) and (5) of s. 5, the learned Advocate-General contends that the conclusion is irresistible that a Commission of Inquiry is a Court for the purposes of s. 195(1)(b) as laid down in Lalji Haridas' case. In other words, the submission is that while s. 4 invests a Commission of Inquiry with the power of a Civil Court following the familiar pattern of statutes constituting special tribunals, the legislature has gone further and put the matter beyond doubt by enacting sub-ss. (4) and (5) of s. 5. The contentions advanced on behalf of the appellant were, it is said, the submissions made before the Court in Lalji Haridas' case, and the Court has dealt PG NO 959 with the question as to whether there was a distinction between a case where a statute constituting a tribunal provides that the tribunal shall be deemed to be a Court for the purposes of s. 195(1)(b) and a case where a statute does not expressly say so. The majority on a construction of the various provisions of the Act, expressed the considered view that the absence of such a provision makes no difference. It was further not open for us to say that the decision in Lalji Haridas' case was no longer binding on us merely by the enactment of sub-s. (3) of s. 195 of the Code. The learned Advocate-General then read out the provisions of s. 195(1)(b) of the Code of Criminal Procedure, 1898 and of the present Code, as well as the interpretation clause in sub-s. (3) of s. 195 of the present Code and the analogous provisions in sub-s. (2) of s. 195 of the old Code, to impress upon us that there was no textual difference in the language of s. 195(1)(b). As regards the interpretation clause, it was pointed out that the first part of s. 195(2) of the old Code used the word `means' which was later substituted by the word `includes'. The first part of s. 195(2) was therefore an inclusive one but the second was an exclusionary clause so as to exclude the Registrar or the SubRegistrar under the Indian Registration Act from the purview of the expression `Court', as defined by the first part of s. 195(2). In contrast, the definition of the term `Court' in sub-s. (3) of s. 195 of the present Code is exhaustive. However, it is urged that all that s. 195(3) of the present Code does is to provide that in cl.(b) the term `Court' as defined in s. 195(3) means a Civil Revenue or Criminal Court and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section. The definition of `Court' in the first part of s. 195(3) of the Code is therefore restrictive while the second is inclusive. It is contended that the definition of a word may either be restrictive of its ordinary meaning or it may be extensive of the same. Sometimes, definition of a term contains the words `means and includes' which may inevitably raise a doubt as to interpretation. According to the learned Advocate-General, the inclusive part of the definition of `Court' in s. 195(3) of the Code was ex abundanti cautela and was merely declaratory of the law. It is submitted that the first part of sub-s. (4) of s. 5 of the Act fulfils the requirements of the inclusive part of the definition of `Court' in s. 195(3) of the Code. Therefore, the Act was in line with sub-s. (3) of s 195 of the Code,

there was no occasion for Parliament to effect an amendment of the Act, particularly having regard to the majority decision in Lalji Haridas' case.

PG NO 960 The learned Advocate-General with much learning and resource submits that there are different types of legislative practices. One such instance is that of sub-s. (4) of s. 37 of the Indian Income Tax Act, 1922, inserted in the Act in 1956, which provides that any proceeding before an Income Tax Officer shall be deemed to be a judicial proceeding, like in sub-s. (5) of s. 5 of the Commissions of Inquiry Act here. Our attention was drawn to the following observations of Gajendragadkar, CJ speaking for the majority in Lalji Haridas' case as to the purport and effect of s. 37 of the Indian Income Tax Act, at pp. 709-710:

"The expression "judicial proceeding" is not defined in the Indian Penal Code, but we have the definition of the said expression under s. 4(m) of the Cr. Procedure Code. Section 4(m) provides that "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. The expression "Court" is not defined either by the Cr. P.C. or the I.P.C., though 'Court of Justice' is defined by s. 20 of the latter Code as denoting a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially. Section 3 of the Evidence Act defines a "Court' as including all Judges and Magistrates and all persons except the Arbitrators legally authorised to take evidence. Prima facie, there is some force in the contention that it would not be reasonable to predicate al out every judicial proceeding that it is a proceeding before a Court. and so, it is open to the appellant to urge that though the proceeding before an Income-tax officer may be a judicial proceeding under s. 193, I.P.C. it would not follow that the said judicial proceeding is a proceeding in a Court as required by s. 195(1)(b), Cr. P.C."

And to the operative part of the judgment delivered by the learned Chief Justice at pp. 710-711:

"It is true, the Additional Solicitor-General has mainly relied upon the relevant provisions of several statutes in support of his construction and in so far as it appears that certain provisions in some of the said statutes in terms extend the application of s. 195 Cr. P.C. to the proceedings to which they relate, the argument does receive support, but PG NO 961 we hesitate to hold that the omission to refer to s. 195(1)(b), Cr. P.C. in s. 37(4) of the Act necessarily means that the intention of the legislature in enacting s. 37(4) was merely and solely to provide for a higher sentence in regard to the offence under s. 193, I.P.C. if it was committed in proceedings before the Income-tax Officer. It is plain that if the argument of the Additional Solicitor General is accepted, the result would be that a complaint like the present can be made by any person and if the offence alleged is proved, the accused would be liable to receive higher penalty awardable under the first paragraph of s. 193, I.P.C. without the safeguard correspondingly provided by s. 195(1)(b), Cr. P.C. Could it have been the intention of the legislature in making the offence committed during the course of a proceeding before an Income-tax Officer more serious without affording a corresponding safeguard in respect of the complaints which can be made in that behalf? We are inclined to hold that the answer to this question must be in the negative."

The learned Chief Justice then concluded: "After careful consideration, we have come to the conclusion that the view taken by the Bombay High Court should be upheld though for different reasons. Section 37(4) of the Act makes the proceedings before the Income-tax Officer judicial proceedings under s. 193 T.P.C. and these judicial proceedings must be treated as proceedings in any Court for the purpose of s. 195(1)(b), Cr. P.C. That, we think, would really carry out the intention of the legislature in enacting s. 37(4) of the Act."

Incidentally, the learned Advocate-General also drew our attention to the following observations at p. 706 where the majority was dealing with s. 195(2) of the old Code saying that it was not necessary to deal with the effect of that provision because, they did not propose to base their decision on the ground that the Income-tax Officer was a Revenue Court under that sub-section, and added:

"The only point of interest to which we may incidentally refer is that this sub-section gives an inclusive, though not exhaustive, definition and takes within its purview not only Civil and Criminal Courts, but also Revenue Courts, PG NO 962 while excluding a Registrar or Sub-Registrar under the Indian Registration Act."

Another decision to which the learned Advocate-General relied upon is that of this Court in Balwant singh & Anr. v. L. C. Bharupal, Income-Tax Officer, New Delhi & Anr., [1968] 70 ITR 89 where a three-Judges Bench speaking through Shelat, J. reiterated the majority view in Lalji Haridas' case and held that: the proceedings before an Income-tax Officer for the registration of a firm under s. 26A of the Indian Income-tax Act, 1922 were judicial proceedings in a Court for the purposes of s. 195(1)(b) of the Code. Another legislative practice to which our attention was drawn by the learned Advocate-General was the one employed in s. 34 of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972. Sub-s. (l) of s. 34 of that Act provides that the District Magistrate, the Prescribed Authority or any appellate authority shall, for the purposes of holding any inquiry or hearing any appeal under the Act, have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters enumerated therein, just like s. 4 of the Commissions of Inquiry Act. Then comes sub-s. (2) which may be extracted below:

"(2) The District Magistrate, the Prescribed Authority or appellate or revising authority, while holding an inquiry or hearing an appeal or revision under this Act. shall be deemed to be a Civil Court within the meaning of sections 345 and 346 of the Code of Civil Procedure, 1908 and any proceeding before him or it to be a judicial proceeding within the meaning of sections 193 to 228 of the India Penal Code (Act No. XLV of 1860)."

In Chandrapal .Singh & Ors. v. Maharaj Singh & Anr. [1982] 1 SCC 466, a 3-Judges Bench speaking through Desai, J. held that in view of the specific provision made in sub- s.(2) of s. 34 of the UP Rent Act. a District Magistrate must be deemed to be a Civil Court within the meaning of s. 193 of the Indian Penal Code, as well as for the purposes of ss. 195(1)(b) and 482 of the Code of Criminal Procedure. We were referred to the following passage in that judgment:

"Now, sub-section (2) of Section extracted hereinbefore would show that the expression `District Magistrate' which would include any officer authorised by him to exercise, perform and discharge

his powers, functions and duties, PG NO 963 shall be deemed to be a civil court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898. Sections 345 and 346 of the Code of Criminal Procedure 1973, are corresponding to Sections 480 and 482 of the Cr.P.C., 1898. As a corollary it would follow that the Rent Control Officer shall be deemed to be a civil court within the meaning of Sections 345 and 346 of the Cr. P.C., 1973 and in view of sub-section (2) of Section 34 of the Rent Act, shall be a civil court for the purpose of section 193, IPC. Section 195(3), Cr.P.C. provides that the expression `Court' in Section 195(1)(b)(i) will include a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a court for the purposes of the section. Section 195(1)(b)(i) provides a pre-condition for taking cognizance of an offence under Section 193, IPC, viz. a complaint in writing of the court. In view of the specific provision made in sub-section (2) of Section 34 of the Rent Act that for the purposes of Sections 345 and 346. Cr.P.C., Rent Control Officer, assuming it to be a tribunal as held by the High Court and not a court, would be deemed to be a civil court and, therefore, for purposes of Sections 193 and 228, IPC a fortiori any proceeding before it would be a judicial proceeding within the meaning of Section 193, IPC. If, therefore, according to the complainant false evidence was given in a judicial proceeding before a civil court and the persons giving such false evidence have committed an offence under Section 193, IPC in or in relation to a proceeding before a court, no court can take cognizance of such offence except on a complaint in Writing of that court."

Placing reliance on these observations, the learned Advocate-General contends that according to the ratio in Chandrapal Singh's case, a Commission of Inquiry is a Court for the purposes of s. 195 (1)(b). According to him, the first part of sub-s.(4) of s.5 of the Act satisfies the requirements of the inclusive part of the definition of `Court' as contained in sub-s.(3) of s.195 of the Code. Another legislative practice, according to the learned Advocate General, was the one adopted by s. 28 of the Finance Act, 1985 where the law enacted contains a legal fiction that any proceeding under the Income-tax Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of ss. 193 and 228 and for the PG NO 964 purposes of s. 196 of the Indian Penal Code viz. every income-tax authority shall be deemed to be a Civil Court for the purposes of s. 195 but not for the purposes of Chapter XXVI of the Code. According to him the amendment brought about in s. 136 of the Income-tax Act was nothing but `legislative exposition of the law', as declared in Lalji Haridas' case. To substantiate his submission that the legislature adopted different methods to achieve the same end, he drew our attention to s. 23 of the Workmen's Compensation Act, 1923 and s. 18 of the Payment of Wages Act, 1936 where, like s. 136 of the Income-tax Act, 1961 as now amended by s. 28 of the Finance Act, 1985 the analogous provision which, he says is a combination of two provisions like sub-ss. (4) and (5) of s. S of the Commissions of Inquiry Act, into one, enacts that the Commissioner appointed under the Workmen's Compensation Act shall be deemed to be a Civil Court for all purposes of s. l9S of the Code, and by s. 18 of the Payment of Wages Act, that the authority appointed under the Act shall be deemed to be a Court for the purposes of s. 195 of the Code. The phraseology may differ but, the learned Advocate-General contends, the method is the same. He also referred to sub-s. (4) of s. 108 of the Customs Act, 1952 which provision is in pari materia with sub-s. (5) of s. 5 of the Commissions of Inquiry Act, and enacts that every proceeding before a Customs Officer shall be deemed to be a judicial proceeding within the meaning of ss.193 and 228 of the Indian Penal Code. It would be seen that the underlying theme of all these submissions of the learned AdvocateGeneral is by placing emphasis on sub-s. (4) of s. 5 of the

Commissions of Inquiry Act which provides that a Commission of Inquiry shall be deemed to be a Court. He contends that the legal fiction must be given its full effect and therefore the Commission must be treated to be a Civil Court for `all purposes'. And in the alternative, he submits that the word `deemed' is also sometimes used by the legislature in order to remove any doubt in the matter. We shall consider all these aspects in their proper context.

After the conclusion of the hearing Dr. Chitale, learned counsel for the appellant, has furnished a list of 11 enactments where Parliament while enacting a law has made an express provision that the Tribunal shall be deemed to be a Court for the purposes of s. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. For instance. sub-s. (6) of s. 20 of the Aluminium Corporation of India Limited (Acquisition and Transfer of Aluminium Undertaking) Act, 1984 provides that any investigation before the Commission shall be deemed to be a judicial proceeding within the meaning of ss. 193 and 228 of the Indian Penal Code and the Commissioner shall be deemed to be a Civil Court for the PG NO 965 purposes of s. 195 and Chapter XXVI of the Code of A Criminal procedure, 1973. Similar provisions are contained in s. 18(6) of the Amritsar Oil Works (Acquisition etc.) Act, 1982, s. 22(6) of the Bengal C. & P. Works Ltd. Act, 1980, s. 21(6) of the Bengal Immunity Co. Ltd. (Acquisition & T.O.U.); Act, 1984, s. 19(6) of the Bird & Company Ltd. (Acquisition etc.) Act, 1980, s. 12(3)(d) of the Cine Workers etc. (Regulation of Employment) Act, 1981, S. 37(2) of the Emigration Act, 1983, s. 13(5) of the Consumer Protection Act, 1986, ss. 14 of the Sick Industrial Companies (Special Provisions) Act, 1985, s. 19 of the Illegal Migrants (Determination by Tribunals) Act, 1983 and s. 95 of the Coast Guard Act, 1978, deeming the Commissioner or the Tribunal appointed under the respective Acts for investigation of claims to be a Civil Court for the purposes of s. 195 and Chapter XXVl of the Code of Criminal Procedure, 1973. Of these eleven enactments, 5 relate to acquisition of certain industrial undertakings and there is provision made for investigation of claims for the purposes of payment of compensation. The sixth relates to regulation of the conditions of employment of a class of workmen. The remaining five enactments provide for creation of a tribunal for investigation of claims or entrusted with certain adjudicatory functions. It would therefore appear that Parliament in its wisdom wherever thought it fit has inserted a special provision for deeming a tribunal to be a Court for the purposes of s. 195(1)(b) but has left the other enactments like the Commissions of Inquiry Act untouched although sub-s. (3) of s. 195 has been on the Statute Book for the last over 14 years. This lends support to the submission of Dr. Chitale that it is no more a question of interpretation but one of express enactment. The crucial question that falls to be determined in this appeal is whether sub-s. (3) of s. 195 has brought about a change in the law and therefore the majority decision in Lalji Haridas' case no longer holds the field as submitted by Dr. Chitale, appearing on behalf of the appellant, or was merely declaratory of the law as declared by the Court in Lalji Haridas' case, as argued by the learned Advocate General, and therefore, the decision in Lalji Haridas' case is still good law. It cannot be doubted that sub-s. (3) of s. 195 of the Code has been enacted by Parliament to implement the recommendations of the 41st Report of the Law Commission which brought about the unsatisfactory state of law due to conflict of opinion between different High Courts as to the meaning of the word `Court' in s. 195(1)(b) read in the context of s. 195(2) of the earlier Code. The interpretative exercise undertaken by the Courts over the years as to the precise meaning of the term `Court' as defined in s. 195(1)(b) of the old Code prior to the introduction of sub-s.(3) of s. 195 of the present Code, PG NO 966 reveals an endless oscillation between two views--each verging on a fringe of obscurity and vagueness. As echoed by Lord

Macmillan in his Law & Other Things at p. 48:

"In almost every case, except the very plainest, it would be possible to decide the issue either way with reasonable legal justification and that in such cases, ethical considerations operate and ought to operate."

In that uncertain state of law, the Law Commission observed in paragraph 15.99 of its Report that it felt that in any concrete case this question is bound to create problem of interpretation and accordingly suggested a change in law for the purposes of s. 195 of the Code. It felt that the term `Court' for the purposes of clauses (b) and (c) should mean a Civil, Revenue or a Criminal Court, properly so called, but where a tribunal created by an Act has all or practically all the attributes of a Court, it might be regarded as a Court only if declared by the Act to be a Court for the purposes of s. 195. Indibutably, the introduction of the inclusive clause in the definition of 'Court in subs. (3) of s. 195 has brought about a change in the law. No rule is more firmly established than the principles enunciated in Heydon's case. which have been continually cited with approval not only by the English Courts but also by the Privy Council as well as this Court. The principles laid down in Heydon's case have been enunciated in Craies on Statute Law, 6th edn. at p. 96 as follows:

"That for the sure and true interpretation of all statutes in general (be they penal or beneficial restrictive or enlarging of the common law), four things are to be discerned and considered: (1) what was the common law before the making of the Act (2) What was the mischief and defect for which the common law did not provide (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth (4) The true reason of the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and pro privato commodo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico."

PG NO 967 These rules are still in full force and effect, with the addition that regard must now be had not only to the existing law but also to prior legislation and to the judicial interpretation thereof. The Court applied the rule in Heydon's case in The Bengal Immunity Company Limited v. The State of Bihar & Ors., [1955] 2 SCR 603 in the construction of Art. 286 of the Constitution. After referring to the state of law prevailing in the then Provinces prior to the Constitution as also to the chaos and confusion that was brought about in inter-State trade and commerce by indiscriminate exercising of taxing powers by the different provincial legislatures founded on the theory of territorial nexus, S.R. Das, Actg. CJ. speaking for himself and Vivian Bose and Jafer Imam, JJ. proceeded to say:

"It was to cure this mischief of multiple taxation and to preserve the free flow of inter-State trade or commerce in the Union of India regarded as one economic unit without any provincial barrier that the constitution-makes adopted Art. 286 of the Constitution."

An illustration of the application of the rule is also furnished in the construction of s. 2(d) of the Prize Competitions Act, 1955. In R.M.D. Chamarbaugwalla v. The Union of India [1957] SCR 930 Venkatarama Ayyar, J. speaking for the Court after referring to the previous state of the law, to that

mischief that continued under that law and to the resolutions passed by different State Legislatures under Art. 252 (1) of the Constitution authorising Parliament to pass the Act stated:

"Having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend on any substantial degree of skill."

A further example is furnished in the construction of s. 16(3) of the Indian Income-tax Act, 1922 which provides: "In computing the total income of any individual for the purpose of assessment. there shall be included (a) so much of the income of a wife or minor child of such individual as arises directly or indirectly." The question before the Court was whether the word `individual' occurring in s. 16(3) meant only a male or also included a female. After finding that the said word in the setting was ambiguous, Bhagwati, J. speaking for himself and J.L. Kapur, JJ. in The Commissioner PG NO 968 of Income-tax, Madhya Pradesh & Bhopal v. Sodra Devi, [1958] SCR 1 observed:

"In order to resolve this ambiguity therefore we must of necessity have resort to the state of the law before the enactment of the provisions, the mischief and the defect for which the law did not provide; the remedy which the legislature resolved and appointed to cure the defect; and the true reason of the remedy;

After taking into account these factors the learned Judge went on to say:

"It is clear that the evil which was sought to be remedied was the one resulting from the widespread practice of husbands entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnerships of which they were members. This evil was sought to be remedied by the enactment of s. 16(3) in the Act."

There is no need to burden the judgment with numerous citations. Following the rule in Heydon's case it appears to us that to construe sub-s. (3) of s. 195 of the Code it is not only legitimate but highly convenient to refer both to the former Code and the state of uncertainty brought about due to conflict of views between different High Courts, and to the present Code which seeks to provide the remedy. It was to cure this mischief that Parliament brought in sub-s. (3) of s. 195 of the Code and put an end to the controversy.

Law must be definite, and certain. If any of the features of the law can usefully be regarded as normative, it is such basic postulates as the requirement of consistency in judicial decision-making. It is this requirement of consistency that gives to the law much of its rigour. At the same time, there is need for flexibility. Professor H.L.A. Hart regarded as one of the leading thinkers of our time observes in his influential book 'The Concept of Law', depicting the difficult task of a Judge to strike a balance between certainty and flexibility:

"Where there is obscurity in the language of a statute, it results in confusion and disorder. No doubt the courts so frame their judgments as to give the impression that their decisions are the necessary

consequence of predetermined PG NO 969 rules. In very simple cases it may be so; but in the vast majority of cases that trouble the courts, neither statute nor precedents in which the rules are legitimately contained allow of only one result. In most important cases there is always a choice. The judge has to choose between alternative meanings to be given to the words of a statute or between rival interpretations of what a precedent amounts to. It is only the tradition that judges `find' and do not `make' law that conceals this, and presents their decisions as if they were deductions smoothly made from clear pre-existing rules without intrusion of the judge's choice."

Faced with the difficulty, the learned Advocate General with his usual astuteness says that although he cannot fall back on the inclusive part of the definition of `Court' in sub-s. (3) of s. 195 of the Code, laid particular emphasis on the main part of the definition and contended that the mere absence ot an express provision in the Commissions of Inquiry Act deeming the Commission to be a Court for the purposes of s. 195 of the Code, it would not necessarily imply that the Commission is not a Court for the purposes of s. 195 particularly when sub-s. (4) of s. 5 in express terms provides that the Commission shall be deemed to be a Civil Court and sub-s. (5) expressly provides that any proceeding before the Commission shall be deemed to be judicial proceeding within the meaning ot ss. 193 and 233 of the Indian Penal Code.The learned Advocate General contends that the use of the words deemed to be' indicates that the proceedings before a Commision of Inquiry are not judicial proceedings, but by legal fiction they have to be regarded as judicial proceedings for the purposes of ss. 193 and 228 of the Indian Penal Code. It is contended that the word `deemed' is however sometimes used by the legislature in order to remove any doubt in the matter. He drew our attention to the following observations of Lord Radcliffe in St. Aubyn v . Attorney General LR 1952 AC 15:

" ...The word `deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

PG NO 970 The main thrust of the argument of the learned Advocate General that a Commission of Inquiry should be regarded as a Court for the purposes of s. 195(1)(b) stems from a wrongful hypothesis that subs. (4) of s. 5 of the Act is in two parts. He contends for the purpose of his submission that sub-s. (4) of s. 5 of the Act consists of two separate provisions, the first of which deals with the status of a Commisson of Inquiry as a Civil Court and the second deals with the power of the Commission to forward a case under s. 482 of the earlier Code (corresponding to s. 346 of the present Code) when any offence as is described in s. 175, s. 179, s. 180 or s. 228 of the Indian Penal Code is committed in view of or presence of the Commission, to a Magistrate having jurisdiction to try the same. The submission is that sub-s.. (4) is in two parts dealing with separate subject- matters and merely because they are joined by the word `and', the first part cannot be projected into the second. We are afraid, we are unable to agree with this line of reasoning. It would not be correct to contend that the legal fiction contained in the first part of sub-s. (4) is complete in itself and therefore a Commission of Inquiry must, by reason of the legal fiction contained therein, be deemed to be a Civil Court `for all purposes'. The argument fails to take note of the fact that the words `for all purposes' are not there in the first part of sub-s. (4) and the Court cannot in the guise of

interpreting the provision, supply any casus omissus. The first part of sub-s. (4) merely provides by the legal fiction that a Commission of Inquiry shall be deemed to be a Civil Court and it stops there. We are quite clear that the first part cannot be read in isolation but must take its colour from the context in which it appears. It would not be correct to contend that the fiction created by the first by the words `shall be deemed to be a Civil Court' is full and complete in itself. The purpose and object of the legal fiction created by the first part of sub-s. (4) is reflected in the second. A Commission of Inquiry is therefore fictionally a Civil Court for the limited purpose of proceeding under s. 482 of the old Code or under s. 346 of the present Code. A fortiori, the legal fiction contained in sub-s. (5) of s. 5 which relates to the proceedings before the Commission is necessary confined to offences that are punishable under ss. 193 and 228 of the Indian Penal Code and does not extend beyond that.

In Lalji Haridas case the majority of this Court held that the proceedings before an Income-tax Officer under s. 37(4) of the Indian Income-tax Act, 1922 were judicial proceedings under s. 193 of the Indian Penal Code and such proceedings must be treated as proceedings in any Court for the purposes of s. 195(1)(b) of the Code. It must be remembered that the decision in Lalji Haridas' case was rendered prior to the enactment of sub-s. (3) of s. 195 of PG NO 971 the present Code. The Court was therefore concerned with the defintion of the term `Court' under s. 195(2) of the earlier Code which was an inclusive one. There being no express provision akin to s. 40 of the Indian Railways Act, s. 23 of the Workmen's Compensation Act or s. 18 of the Payment of Wages Act, the matter was one of construction. The question therefore whether an Income-tax Officer was a Court for the purposes of s. 195(1)(b) was more a question of interpretation than one of express enactment after the amendment of s. 126 of the Income-tax Act, 1961 by s. 28 of the Finance Act, 1985. The decision of the majority in Lalji Haridas' case is now more of academic interest. The decision in Balwant Singh's case does not carry the matter any further.

It would be convenient at this stage to deal with the decision of this Court in Chandrapal Singh's case. Under the scheme of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972. various functions are entrusted to different authorities. The District Magistrate as defined in s. 3(c), is vested with the power of making an order of allotment under s. 16(1)(a). In making such an order of allotment under cl. (a) or on order of release of accommodation under cl. (b) of s. 16(1), the District Magistrate clearly exercises a quasijudicial function and therefore has a duty to hear. The landlord has a right to have the order passed by the District Magistrate under s. 16(1)(b) for release of the building or part thereof for any of the purposes set out in s. 16(2). The District Magistrate may release the building or any part thereof or any land appurtenant thereto under s. 16(1)(b) where any of the aforesaid conditions are proved to exist to his satisfaction. The expression `District Magistrate' as defined in s. 3(c) is an inclusive one and it includes an officer authorised by the District Magistrate to exercise, perform and discharge all or any of his powers, functions and duties. Such an officer is normally designated as the Rent Control & Eviction Officer. Under s. 20 of the Act the powers of eviction are exercisable by the regular Civil Courts. In cases not falling under s. 20 but under s. 21, the powers are exercisable by the Prescribed Authority. A landlord may apply for release of the accommodation on the ground of bona fide requirement under s. 21(1)(a) before the Prescribed Authority. The expression `Prescribed Authority' as defined in s. 3(e) means a Civil Judicial Officer or Judicial Magistrate authorised by the District Magistrate to exercise perform and discharge all or any of the powers, functions and duties of the Prescribed Authority under the Act.

The hierarchy of Courts is clearly established because s. 18 of the Act contemplates an appeal from an order of the District Magistrate to the District PG NO 972 Judge. Although therefore Desai, J. in delivering the judgment of the Court has not referred to the definition of District Magistrate in s. 3(c) and that of the Prescribed Authority under s. 3(e) or the provision for an appeal under s. 18 of the Act. but has referred the authority as the Rent Control Officer which expression is not used in the Act. Presumably, when the learned Judge when he described the Rent Control Officer at p. 471 of the Report as a Civil Court, meant that the authorities designated under the Act were `Civil Courts In any event, considering the nature of functions to be performed under the U.P.Rent Act, the authorities designated would be Civil Courts. In contrast, a Commissions of Inquiry constituted under the Commission of Inquiry Act is neither a Civil Court nor a Criminal Court or a Court properly so called in the strict sense of the them. In view of the change in law, we fail to appreciate the contention of the learned Advocate-General, without meaning any disrespect, that the principles laid down by the majority in Lalji Haridas' case that on a combined reading of sub-ss. (4) and (5) of s. 5 of the Commissions of Inquiry Act read in the context of sub-s. (4), an Income-tax Officer must still be regarded to be a Court for the purposes of s. 195(1)(b),despite the enactment of sub-s. (3) of s 195. A Commission of Inquiry is not a Court properly so called. A Commission is obviously appointed by the appropriate Government `for the information of its mind' in order for it to decide as to the course of at action to be followed. It is therefore a fact-finding body and is not required to adjudicate upon the rights of the parties and has no adjudicatory function. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by it is of a legal character and It has the power to administer an oath will not impart to it the status of a Court.

In Virindar Kumar Satyawadi v. State of Punjab, supar, a threejugdes Bench speaking through Venkatarama Ayyar, J. relying upon the celebrated decision of the House of Lords in Shell Co. of Australia v. Federal Commissioner of Taxation. LR (1931) AC 275 explained the legal connotation of the term `Court'in these words:

"What distinguished a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the right of parties in a definitive judgment. to decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation PG NO 973 on the part of the authority to decide the matter on a consideration of the adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi- judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court."

It is a familiar feature of modern legislation to set up bodies and tribunals, and entrust them with work of a judicial, quasi-judicial or administrative character, but they are not Courts in the accepted sense of that term, though they may possess, as observed by Lord Sankey, L.C. in Shall Co. of Australia's case, some of the trappings of a Court. Venkatarama Ayyar, J. in Virindar Kumar Satyawadi has referred to several decisions of the Courts in England and Australia as to what are the essential characteristics of a Court as distinguished from tribunals exercising quasi- judicial functions.

About a decade later in Jagannath Prasad v.State of Uttar Pradesh, supra, case, this Court following its earlier decision in Smt. Ujjam Bai v. State of Uttar Pradesh, [1961] 1 SCR 778 held that no doubt a Sales The Officer appointed under the U.P. Sales Tax Act, 1948 is an instrumentality of the State employed for the purposes of assessment and collection of taxes and merely because he has. in the discharge of his duties, to perform certain quasi-judicial functions i.e. has certain powers which are similar to the powers exercised by Courts, still is not a Court as understood in s. 195 of the Code. The Court relied upon the decision of the House of Lords in .Shell Co. of Australia for the view that a Sales Tax Office was not a Court in the strict sense of that term. It referred with approval to the following observations of Lord Sankey, L.C. where he enumerated some negative propositions to contra-distinguish a tribunal from a Court:

"In that connection it may be useful to enumerate some negative propositions on this subject: I. A tribunal is not necessarily a Court in this strict sense because it gives a final decision 2. Nor because it hears witnesses on oath 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body. See Rex. v.Electricity Commissioners, [1924] 1 K.L.B. 171 PG NO 974 There had been prior to the enactment of sub-s. (3) of s. 195 of the present Code, a sharp conflict of opinion between the High Courts as to what are the Courts and what are not for the purposes of s. 195(1)(b) of the old Code. The question whether a Commission of Inquiry constituted under the Commissions of Inquiry Act was a Court within the meaning of the Contempt of Courts Act, 1952 and whether the proceedings before the Commission of Inquiry were judicial proceedings directly arose before a Division Bench of the Nagpur High Court in M. V. Rajwade v. Dr. S.M. Hassan, supra. Bhutt, J. speaking for himself and B.P. Sinha, CJ held that a Commission of Inquiry constituted under the Commissions of Inquiry Act, 1952 was not a Court within the meaning of the Contempt of Courts Act. The learned Judge rightly observed that the legal fiction created by the first part of sub-s. (4) is for the limited purpose specified in the second and that the purpose for which the fiction is created is therefore to be gathered from what follows after the words which create the fiction. In dealing with the fiction, Bhutt, J. observed:

"Applying this test in the instant case, it would appear that the purpose for which the fiction is created in sub- section (4) of Section 5 of the Commissions of Inquiry Act, 1952, is to be inferred from the words that follow the expression the Commission shall be deemed to be a Civil Court". It would not be correct to contend that the above expression is full and complete in itself and what follows it only denotes the limitation on the full-fledged status and powers of a civil Court that the Commission would otherwise have possessed. If that was the intention of the Legislature, the sentence would have been completed after the words "civil court" and what follows it would have been the subject of a separate sub-section or sentence. It is, therefore, clear that under the Commissions of Inquiry Act, 1952, the Commission is fictionally a civil court only for the purpose of the contempts punishable under ss. 175, 178, 179, 180 and 228 of the Indian Penal Code, 1860, subject to the condition that it has not the right itself to punish the contemners, a right which other Courts possess under Section 480 of the code of Criminal Procedure 1898. Similarly it follows that the fiction relating to the proceedings before the Commission is confined to offenses that are punishable under Sections 193 and 228 of the Indian Penal Code, I860, referred to in sub-section

(5) of the Act, and does not extend beyond this limit."

PG NO 975 The learned Judge then dealt with a Commission of Inquiry constituted under the Commissions of Inquiry Act and held that the Commission has not the attributes of a Court. In repelling the contention that the function of the Commission being of a advisory nature which was akin to the Judicial Committee to the Privy Council which only advised His Majesty and did not deliver any judgment themselves, as well as distinguishing the decision of the Lahore High Court in M.M. Khan v. Emperor, ILR (1931) 12 Lah. 391 holding that the Special Commissioners appointed under the Public Servants (Inquiries) Act, 1850 constituted a Court within the meaning of s. 195, the learned Judge observed:

"An enquiry under the Commissions of Inquiry Act, 1952,on the other hand, is of wholly different character. There is no accuser, no accused and no specific charges for trial; nor is the Government under the law, required to pronounce. one way or the other, on the findings of the Commission "

The learned Judge relied upon the following observations of the Judicial committee of the Privy Council In re. Maharaja Madhava Singh, LR (1905) 31 IA 239 where the Judicial Committee in dealing with the Commissioners appointed by the Viceroy and the Governor General-in-Council for the purpose of enquiring into the truth of a certain imputation against the Maharajah, observed:

"It is sufficient to say that the Commission in question was one appointed by the Viceroy himself for the information of his own mind, in order that he should not act in his political and sovereign character otherwise than in accordance with the dictates of justice and equity, and was not in any sense a Court, or, if a Court, was not a Court from which an appeal lies to His Majesty in Council." The learned Judge rightly observed that the ratio decidendi in that case was that the Commissioner were not a Court and held that the observations made by the Judicial Committee apply mutatis mutandis to a Commission of Inquiry constituted under the Commissions of Inquiry Act, and observed:

"The Commission in question was obviously appointed by the State Government" for the information of its own mind", in order that it should not act, in exercise of it power, "otherwise than in accordance with the dictates of justice PG NO 976 and equity" in ordering a departmental enquiry against its officers. It was, therefore, a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature. The two cases are parallel, and the decision must be, as in--`In re Maharaja Madhava Singh, (D)', that the Commission was not a Court. The term `Court' has not been defined in the Contempt of Courts Act, 1952. Its definition in the Indian Evidence Act, 1872, is not exhaustive and is intended only for purposes of the Act. The Contempt of Courts Act, 1952, however, does contemplate a 'Court of Justice' which as defined in S. 20, Penal Code, 1860 denotes 'a Judge who is empowered by law to act judicially'. The word `Judge' is defined in Section 19 as denoting every person--

"Who is empowered by law to give in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive .. ' The minimum test of a `Court of Justice, in the

above definition, is, therefore, the legal power to give a judgment which, if confirmed by some other authority, would be definitive. Such is the case with the Commission appointed under the Public Servants (Inquiries) Act, 1850, whose recommendations constitute a definitive judgment when confirmed by the Government. This, however, is not the case with a Commission appointed under the Commissions of Inquiry Act, 1952, whose findings are not contemplated by law as liable at any stage to confirmation by any authority so as to assume the character of a final decision. ' We are in agreement with these observations. P.V. Dixit, CJ. speaking for himselt and G.P. Singh, J. In Puhupram & Ors. v. .State of Madhya Pradesh & Ors., [1968] MPLJ 629 stated the law thus:

"It is not necessary to stress that the inquiry, which the Commission is going to hold, is not an inquiry by a civil or criminal Court and the proceedings thereof are not PG NO 977 judicial proceedings of a Court of law. [See: Chiman Singh v. State, AIR (195]) MB 44; M.V. Rajwade v. Dr. S.M. Hassan, AIR (1954) Nag. 71 and Ram Krishna Dalmia v. Justice `Tendolkar, AIR (l958) SC 538.1 The decision just cited point out what is "Court" and what are judicial proceedings of a Court of law. Judged by the tests laid down in those decisions, there can be no doubt that the inquiry, which the Commission is going to held, is not a judicial proceeding of a Court of law. The Commission has not been asked to give a decision as to the respective rights and liabilities of any person or to punish any wrong. In an inquiry of this nature, there is no issue between parties for the Commission to decide and no defendant or an accused person to be tried. There is no `lis'."

We are satisfied that the decision of the Nagpur High Court in M.V. Rajwade's case and that of the Madhya Pradesh High Court in Puhupram lay down the correct law. The least that is required of a Court is the capacity to delivery a `definitive judgment'. and merely because the procedure adopted by it is of a legal character and It has power to administer an oath will not impart to it the status of a Court That being so, it must be held that a Commission of Inquiry appointed by the appropriate Government under s. 3(1) of the Commissions of Inquiry Act is not a Court for the purposes of s. 195 of the Code.

In conclusion, we wish to clarify that this judgment of ours will not prevent the State Government from launching a prosecution against the appellant for commission of the alleged offences under ss. 193 and 228 of the Indian Penal Code, 1860, if otherwise permissible in law. In the result, the appeal succeeds and is allowed. The judgment and order passed by the High Court are set aside and the proceedings pending in the Court of the Additional Chief Metropolitan Magistrate at Esplanade, Bombay in Criminal Case No. 1121 (W) of 1987 against the appellant for having committed alleged offences punishable under ss. 193 and 228 of the Indian Penal Code, 1860 on a complaint filed by the Secretary to the Commission, are quashed.

R.S.S. Appeal allowed.