PETITIONER:
ROHTAS INDUSTRIES LTD.

Vs.

RESPONDENT:
S.D. AGARWAL & ANR.

DATE OF JUDGMENT:
16/12/1968

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SIKRI, S.M.
BACHAWAT, R.S.

CITATION:
1969 AIR 707 1969 SCR (3) 108
1969 SCC (1) 325
CITATOR INFO :

D	1970 SC 564	(26,228,229,231)
R	1970 SC1789	(14)
RF	1972 SC1816	(18)
RF	1974 SC2249	(10)
D	1976 SC1913	(18)
R	1978 SC 597	(86,222)
D	1982 SC 149	(1245)
C	1984 SC1271	(26)
RF	1987 SC1109	(26)

ACT:
Indian Companies Act (1 of 1956), s. 237 (b)(i) and (ii)-Circumstances suggesting fraud-Existence of-If condition precedent to action under section.

HEADNOTE:
On May 20, 1960, Albion Plywoods Ltd. resolved at a general meeting to convert its preference shares into ordinary shares. M/s. Sahu Jains were its managing agents. Some time before, in April 1960, New Central Jute Mills Co. Ltd. had sold the preference shares of Albion Plywoods which it was holding. One S. P. Jain, against whom proceedings in criminal courts were pending for acts of misfeasance and malfeasance in relation to other companies, was controlling both the New Central Jute Mills Co. and Sahu Jains. With respect to this sale there was a complaint to the Department of Company Affairs, Government of India, that the management of New Central Jute Mills knew that the preference shares would be converted into ordinary shares and so the sale was effected at an undervalue so that, on conversion into ordinary. shares they would fetch a higher price, and that the transaction was effected for the benefit of the managing agents, their friends and brokers, at the expense of the shareholders. In the course of investigation into this charge, it was discovered that the appellant-company had also 'sold 3000 preference shares of Albion Plywoods which it was holding, on May 6, 1960. The appellant-company was also controlled by S. P. Jain. On April 11, 1963 the Central Government passed an order under s. 237(b) (i) and (ii) of the Companies Act, 1956, appointing an inspector to

investigate into the affairs of the appellant-company and to report thereon to the Central Government, on the basis that the sale of preference shares was a fraudulent transaction considered in the background of the association of S. P. Jain with the appellant-company and other companies. The appellant,company filed a writ petition challenging the order. The High Court dismissed it on the ground that the opinion of the Central Government was not open to judicial review and that the declaration of the Government that it formed the required opinion was conclusive.

In appeal to this Court, it was contended that under the section, an inspector may be appointed only if, in the opinion of the Government there are circumstances suggesting that the business of the company was being conducted with intent to defraud its creditors. members or other persons, or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for a fraudulent or unlawful purpose, or that persons concerned in its formation ,or management have, in connection therewith, been guilty of fraud, misfeasance or other misconduct towards the company or its members; that is, though the opinion of the Government is subjective, the existence of the circumstances is a condition precedent to the formation of the opinion and therefore, the Court was not precluded from going behind the recitals of the existence of such circumstances in the order, but could determine, whether the circumstances did in fact exist, and whether the Central Government took extraneous matters into consideration.

HELD (per Sikri and Hegde, JJ.) : Sections 235 to 237 are allied sections and form a scheme for investigation into the affairs of a company.

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The investigation under s. 237(b) is of a fact finding nature which does not bind anybody. The Government is not required to act on it and the company has to be called upon to have its say in the matter. But, s. 237 takes its colour from the other two sections and those sections show that such an investigation is a very serious matter and should not be ordered except on good grounds. The appointment of an inspector is likely to receive publicity as a result of which the company's reputation and prospects may suffer. The power to appoint an inspector is an inroad on the rights of the company to carry on its business and would violate the fundamental right of its shareholders under Art. 19(1)(f), unless the power is so interpreted as to be a reasonable restriction in the interest of general public, and not as an arbitrary power. It would be a reasonable restriction if circumstances suggesting that the company's business was being conducted as laid down in s. 237(b) (i) or that the persons mentioned in s. 237(b) (ii) were guilty of -fraud or misfeasance or other misconduct towards the company or its members, exist as a condition precedent for the Government two form the required opinion, and, if the existence of those circumstances is challenged, the Court is entitled to examine whether those circumstances existed when the order was made. Further, the Department of the Central Government which deals with companies is a body, expert in company law matters, and the standard prescribed under s. 237(b) is not the standard required of an ordinary citizen but that of an expert who would take into consideration only relevant material. [1 17 F; 11 8 G-H; 1 19 B, E; 128 H; 129 A-E]

Observations of Hidayatullah and Shelat, JJ. in Barium Chemicals v. Company Law Board, [1966] Supp. S.C.R. 311,

followed.
Padfield v. Minister of Agriculture, [1968] 1 All E.R. 694, Commissioner of Customs & Excise v. Cure and Deeley Ltd. [1962] 1 Q. B. 340, Roncarelli v. Duplessis,. [1959] S.C.R. (Canada) 121 and Read v. Smith, [1959] New Zealand Law Reports, 996, applied.
Susannah Sharp v. Wakefield, [1891] A.C. 173, 179 and Nakkuda Ali v. M. F. De S. Jayaratne, [1951] A.C. 66, 77, referred to.
State of Madras v. C. P. Sarathy & Anr. [1953] S.C.R. 334, Joseph Kuruvilla Vellukunnel v. The Reserve Bank of India & Ors. [1962] 3 supp. S.C.R. 632, Hubli Electricity Co. Ltd.- v. Province of Bombay, L.R. Vol. LXXVI I.A. 1948-49 p. 57, Robinson v. Minister of Town and Country Planning, [1947] 1 K.B. p. 702 and Point of Avr Collieries Ltd. v.Lloyd George, [1943] 2 All E.R. p. 546, not applicable.
In the present case, the only material on the basis of which the impugned order was made was the transaction of sale of preference shares of Albion Plywoods. But at the time when the Government made the impugned order it did not know the market quotations for the shares, and in fact, the market price showed that no fraud was involved in the sale of the shares. No Reasonable person, much less an expert body, could have come to the conclusion that any fraud was involved. if the Government had any suspicion about the transaction it should have probed further into the matter since the order could not be justified on the material before it. The fact that one of the leading directors of the appellant-company was a suspect in the eye of the Government because of his antecedents was not a relevant circumstance and should not have been taken into consi- deration by the Government which was entrusted with the responsibility of forming a bona fide opinion on the basis of relevant material. [129 F-H; 130 A-D]
(Per Bachawat, J.) : The object of investigation under s. 237(b) is to find out whether in fact any fraud has been committed. The section con-
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fers an administrative and not a judicial power. is discertionary and no appeal is provided against an order. Such discretionary power must be exercised honestly and not capriciously or arbitrarily or for Ulterior purposes. The section must be interpreted in the light of its own language and subject matter and not by reference to other sections or other statutes. So interpreted, the condition precedent for making the order under the section is the opinion of the Central Government that there are circumstances suggesting fraud and not the existence of the circumstances. If the opinion of an administrative agency is the condition precedent to the exercise of the power the relevant matter is the opinion of the agency and not the grounds on which the opinion is founded. The authority must form the opinion honestly and after applying its mind to the relevant materials before it. If it is established that there were no materials at all upon which the authority could form the requisite opinion, the Court may infer that the authority passed the order without applying its mind, that is, the requisite opinion is lacking and therefore the condition precedent to the exercise of the power under the section is not fulfilled. The opinion is displaced as a relevant opinion if it could not be formed by any sensible person on the material before him, the reason being, that the Court may then infer that the authority either did not honestly form the opinion or that in forming it, it did not apply its mind. Within these narrow limits the opinion of the Central

Government is not conclusive and can be challenged in a Court, but the Court has no power to review the facts as an appellate body nor can it substitute its opinion for that of the Government. Had the opinion been conclusive it would have been open to challenge as violative of Arts. 14 and 19 of the Constitution. [131 E-H; 132 A-F; 133 E]

Corporation of Calcutta v. Calcutta Tramways Co. Ltd. [1964] 5 S.C.R. 25, Joseph Kuruville Vellukunnel v. Reserve Bank of India, [1962] Supp. 3 S.C.R. 632, Hubli Electricity Co. v. Province of Bombay, L.R. 76 I.A. 57, Ross-Clunis v. Papadopoullos & Ors., [1958] 2 All E.R. 23, State of Maharashtra v. B. K. Takkamore, [1967] 2 S.C.R. 583, 585, 588, Province of Bombay v. K. S. Advani, [1950] S.C.R. 621, Nakkuda. Ali v. M. E. De, S. Jayaratne, [1951] A.C. 66, 77, State of Madras v. C. P. Sarathy and Anr., [1953] S.C.R. 334, Swadeshi Cotton Mills Co. Ltd. v. State of U.P. & Ors., [1962] 1 S.C.R. 422 and State of Bombay v. K. P. Krishnan,& Ors. [1961]1S.C.R 227, referred.

The learned Judge's own observations in Barium Chemicals v. Company Law Board, [1966] Supp. S.C.R. 311, 343, explained.

In the present case, no complaint with regard to the impropriety of the sale of preference shares of Albion Plywoods was made to the Central Government. There was no material suggesting that the purchasers were benamidars of M/s. Sahu Jains or their friends. The market price of the ,shares of Albion Plywoods on or about the date of sale was not known to the Central Government when the order was made and does not show that the transaction was fraudulent. The charge that the sale was fraudulent was not communicated to the appellant-company nor were they asked to give their explanation on the subject. The Government did not seem to rely on the transaction of sale of preference shares as suggesting fraud. Therefore, there was no material before the Government on which it could form the opinion that there were circumstances suggesting fraud, and hence the opinion was formed without applying its mind to the materials before it and was in excess of its powers under s. 237(b). [135 E, G; 136 H; 137 A-B, D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2274 to 2276 of 1966.

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Appeals by special leave from the judgments and orders, dated January 20, July 4, and July 5, 1966 of the Patna High Court in C.W.J.C., Nos. 18 of 1966, 910 of 1965 and 397 of 1966 respectively.

M. C. Setalvad, M. C. Chagla, R. K. Garg, S. C. Agarwal and S. Chakravarti, for the appellant (in all the appeals).

Niren De, Attorney-General, V. C. Mahajan and S. P. Nayar, for the respondents (in all the appeals).

The Judgment of S. M. SIKRI and K. S. HEGDE, JJ. was delivered by HEGDE, J. R. S. BACHAWAT, J. delivered a separate Opinion.

Hegde J. The only question that arises for decision in these appeals by special leave, is whether the order made by the Central Government in No. 2(4)-CL.1/63, Government of India, Ministry of Commerce and Industry, Department of Company Law Administration on April 11, 1963 is liable to be struck down as not having been made in accordance with law.

The appellant in these appeals is a company incorporated under the Indian Companies Act, 1913 having its registered

office at Dalmia Nagar, Shahbad District, Bihar State. It is manufacturing paper, cement, sugar, vanaspati and other articles. Its authorised capital is rupees 15 crores and the paid up capital little more than six crores. It was incorporated in the year 1933.

The impugned order reads

"No. 2(4)-CL.1/63
Government of India,
Ministry of Commerce and Industry,
Department of Company Law Administration.

ORDER

Whereas the Central Government is of the opinion that there are circumstances suggesting that the business of Rohtas Industries Limited a company having its registered office at Dalmianagar, Bihar (hereinafter referred to as the said company) is being conducted with intent to defraud its creditors, members or other persons and the persons concerned in the management of its affairs have in connection therewith been guilty of fraud, misfeasance, other misconduct towards the said company or its members,

AND WHEREAS the Central Government consider it desirable that an Inspector should be appointed to investigate the affairs of the said Company and to report thereon.

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NOW, THEREFORE, in exercise of the several powers conferred by sub-clauses (i) and (ii) of clause (b) of Section 237 of the Companies Act, 1956 (Act 1 of 1956) the Central Government hereby appoint Shri S. Prakash Chopra of Messrs. S. P. Chopra & Co. Chartered Accountants, 31, Connaught Place, New Delhi as Inspector to investigate the affairs of the said company for the period 1-4-1958 to date and should the Inspector so consider it necessary -also for the period prior to 1-4-1958 and to report thereon to the Central Government pointing out inter alia irregularities and contravention in respect of the provisions of the Companies Act, 1956 or of the Indian Companies Act, 1913 or of any other law for the time being in force and person or persons who are responsible for such irregularities and contravention.

(2) The Inspector shall complete the investigation and submit six copies of his report to the Central Government not later than four months from the date of issue of this order unless time in that behalf is extended by the Central Government.

3. A separate order will issue with regard to the remuneration and other incidental expenses of the Inspector.

The Eleventh day of April, 1963.
By order and in the name of the
President of India
Sd/- D.S. Dang Deputy Secretary to the Government of India"

The time granted to the Inspector has been repeatedly extended. For one reason or the other the investigation directed is still in its initial stage. The various extensions given for completing the investigation are also

challenged in some of the appeals. But that contention was not debated before us. Hence it is not necessary to consider that question.

The contention of the appellant is that the Central Government had no material before it from which it could have come to the conclusion that the business of the appellant company is being conducted with intent to defraud its creditors, members or other persons or the persons concerned in the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the said company or its members.

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In response to the rule issued by the Patna High Court Shri Rabindra Chandra Dutt, the then Secretary to the Government of India, Ministry of Finance, Department of Company Affairs and Insurance and Chairman, Company Law Board, New Delhi filed an affidavit in opposition on behalf of the respondents. Therein various objections to the writ petition were taken but the pleas raised by him in paragraph 5(a) and (b) of his affidavit are the only pleas relevant for our present purpose. This is what is stated therein :

> "I say that the true facts are -as under-
> (a) Shri S. P. Jain together with his friends, relations and associates is principally in charge of the management of the petitioner company. Over a long period, several complaints had been received by the Deptt. as to the misconduct of the said Shri S. P. Jain towards companies under his control and management. Some of these were referred to and inquired into by a commission of Inquiry headed by Mr. Justice Vivian Bose of the Supreme Court of India, which in its report, dated 15-6-62 made adverse findings and observations against Shri S. P. Jain. Shri Jain is being prosecuted in the Court District Magistrate, Delhi under sections 120B read with sections 409, 465, 467 and 477 of the Indian Penal Code in regard to his misconduct in the management of what are known as the Dalmia Jain group of companies, and most of the material upon the basis of which this prosecution was launched was available to the Central Government on 11-4-63. Shri Jain is also being prosecuted in Calcutta for misconduct in the management of Messrs. New Central Jute Mills Co., Ltd., a company under the same management as the petitioner , on the basis of an F.I.R. lodged by the Department with the Special Judge, Police Establishment just before the 1 1 th April 1963, Shri Jain is also being proceeded against before the Companies Tribunal under sections 388B and 398 for misconduct in managing the affairs of M/s. Bennett Coleman & Co., Ltd. and details as to Shri Jain's misconduct were with the Central Government as on 11th April, 1963.
> (b) Complaints had also been received by the Department before 11th April, 1963 specifically as to the misconduct on the part of the manage-
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> ment of the petitioner company in the conduct of its affairs."

The High Court dismissed the writ petition holding that the ,opinion formed by the Central Government under s. 237(b) of the Companies' Act 1956 (hereinafter to be called as the Act) is not open to judicial review; the impugned order declares that the Central Government had formed the required opinion and the same is conclusive. That conclusion of the High Court is ,challenged in this Court.

When this appeal came up for hearing on 17-9-1968 this Court directed the respondents to file a further affidavit placing ,on record the complaints mentioned in paragraph 5(b) of the aforementioned affidavit of Shri Robindra Chandra Dutt. The said affidavit was directed to be filed within a fortnight from that date and the appellants were permitted to file a reply affidavit within a week thereafter.

In pursuance of the above order Shri Sisir Kumar Datta Secretary to the Government of India, Ministry of Industrial Development and Company Affairs. Department of Company Affairs New Delhi filed his affidavit on October 4, 1968. Along with that affidavit he produced into Court three complaints received by the Government which are marked as Annexures 'A' to 'C'. Shri Datta does not claim to have any personal knowledge of the facts of this case. Therefore the only additional material that is placed before us are the three annexures marked as Annexures 'A' to 'C'. Shri Niren De, learned Attorney stated before us that the Union of India had placed before the Court all the relevant material it possessed bearing on the subject.

Annexure 'A' is said to have been submitted in June, 1960. Most of the allegations contained therein are of vague character. It was conceded by the learned Attorney that those allegations could not have been the basis for making the impugned order. 'Therefore it is not necessary to refer to them in extension One of the concrete allegations made therein-on which allegation alone some half hearted reliance was placed at the hearing-is that though the appellant company had a debenture capital of Rs. 48,50,000, on 31-12-39, Shreeram Harjimal, a father concern of Dalmia Jain Group had pledged in various Banks debentures of the appellant-company of the value of Rs. 1,07,47,000 and-raised a loan of nearly rupees one crore. According to the complaint this must have been done by forging some documents. The complaint further stated that the appellant-company has facilitated that fraud by paying interest on the entire loans borrowed. The above allegation has been denied by the appellant in the reply affidavit filed on its behalf. Mr. Attorney conceded that the impugned order -could not have been made on the basis of this alle-

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gation as it directed an inquiry into the company's affairs primarily for the period subsequent to 1-4-1958 and the allegation in question relates to transactions that took place in about the year 1939 but at the same time he contended that the allegation in question afforded the necessary background in assessing the other allegations. Some of the allegations contained in that complaint such as the levy of Rs. 50 lacs fine on S. P. Jain should have been known to the Government to be incorrect in view of the various proceedings that had taken place earlier which were within the knowledge of the Government.

In Annexure 'B' there are no specific allegations. The learned Attorney did not rely on any of the allegations contained therein as having formed the basis for issuing the impugned order.

Annexure 'C' is a complaint relating to the working of New Central Jute Mills Co., Ltd. it makes no reference to the

appellant-company. We were told that the New Central Jute Mills Co. Ltd. is a sister concern of the appellant-company. In paragraph 4 of that complaint following allegations were made :

> "The investments of the Company in Albion Ply-Woods Ltd. and their variations by the Company's Managing Agents appear to have been done to benefit the Managing Agents, their friends and brokers, at the expense of the shareholders. It appears that the preference shares in this company were sold at the market rate of Rs. 100 each when these could be converted into ordinary shares of Rs. 10 each which were then quoting at Rs. 15 in the stock market. This and various other acts of deliberate commissions and omissions require a thorough investigation so that shareholders in general may have a feeling of security in the company."

It appears that Albion Plywoods Ltd. at the relevant time had a subscribed capital of rupees ten lacs made up of Rs. 50,000 ordinary shares of the face value of Rs. 10 each and Rs. 5,000 preference shares of the face value of Rs. 100 each. Though the preference shares were not by right convertible into ordinary shares, it appears in about the end of April or beginning of May, 1960, the Albion Plywoods Ltd. gave notice of a special resolution to permit the conversion of the preference shares into ordinary shares and the said resolution was passed by the General Meeting on May 20, 1960. On May 6, 1960 the appellant-company which held 3,000 preference shares of the Albion Plywoods Ltd. sold the same to M/s. Bagla & Co. for the face value. Annexure 'C' was forwarded to the Regional Director, Company Law Administration, Calcutta for inquiry and report. At this stage it may be noted that the inquiry in question was directed against the New Central Jute Mills Co., Ltd. and not against the appel-

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lant company. The Regional Director submitted his report on November 1 0, 1961. In his report he opined that the transaction complained of is of a doubtful character and therefore further inquiry is desirable. Thereafter on December 2, 1961 the UnderSecretary to the Government of India wrote to the Regional Director asking for some further information. One of the points on which information was called for was whether Sahu Jain's Co's (other than New Central Jute Mills Co. Ltd.) who were holding 3,000 shares of Albion Plywoods Ltd. had also transferred their shares to Bagla & Co./Podar and Sons and to give full details thereof. The Regional Director was also asked to report whether the preference shares of the Albion Plywoods Ltd. carried any voting rights before conversion. In that letter it was further observed :

> "In this regard it is suggested that discreet enquiries may be made to find out the names of the partners of Bagla and Company and Poddar Sons and also whether, the said brokers were actively associated with the Sahu Jains. If considered necessary, the help of the Officer of the Stock Exchange Division of the E. A. Department recently posted at Calcutta may be sought in this regard."

On January 29, 1962, the Regional Director replied to that letter. In his reply he stated :

> "I have been able to gather the following

information regarding the 3,000 preference shares of Rs. 100 each of Albion Plywoods Ltd. The preference shares were acquired by Rohtas Industries Ltd. (A Sahu Jain Company) on allotment by the Albion Plywood Ltd. of such shares on 15th June, 1951. These 3,000 preference shares were sold to M/s Bagla & Co., on 6th May, 1960 at par for Rs. 3 lacs. It would appear that these shares were sold before 20th May, 1960 the date on which the preference shares were converted into ordinary shares."

The Regional Director in his letter of 10th November, 1961, had given the market quotations for the ordinary shares of Albion Plywoods Ltd. on some of the dates in May, 1960. According to him those quotations were gathered from 'Indian Finance'. Evidently as he was inquiring into the complaint made against the New Central Jute Mills Co. Ltd. he did not mention the market quotation for the shares in question either on May 6, 1960 or immediately before that date. During the hearing of these appeals an affidavit has been filed on behalf of the appellant stating that the market quotation of the ordinary share in the Albion Plywoods Ltd. on May 6, 1960 or immediately before that date was Rs. 1 1.

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Alongwith that affidavit, the relevant copy of the Indian Finance was produced.' It was not disputed before us that the market quotation for the ordinary shares of Albion Plywoods Ltd. on or immediately before May 6, 1960 was Rs. 11 per share. At this stage it may be mentioned that though the Under Secretary to the Government required the Regional Director to find out the names of the partners of Bagla & Co. and whether, the brokers who dealt with the shares were actively associated with Sahu Jain, it does not appear that the Regional Director supplied those information. Admittedly there was no material before the Government when it issued the impugned order from which it could have reasonably drawn the conclusion that the transaction in favour of Bagla & Co. was either a nominal transaction or was made with a view to profit the Directors of the appellant-company or their relations. According to Mr. Attorney the only circumstance on the basis of which the Government passed the impugned order was the sale of 3,000 preference shares of Albion Plywoods Ltd. held by the appellant-company though, according to him, the Government viewed that circumstance in the background of the various complaints received by it against Mr. S. P. Jain who was at that time one of the prominent Directors of the appellant-company, New Central Jute Mills Co. Ltd. and Albion Plywoods Ltd., as well as the report made by the Vivian Bose Commission which inquired into the affairs of some of the companies with which Mr. S. P. Jain was connected. Admittedly Vivian Bose Commission did not inquire into the affairs of the appellant-company nor does its report contain anything about the working of that company nor was there any complaint against the appellant-company excepting that made in Annexure 'A'.

On the basis of the above facts we have now to see whether the Government was competent to pass the impugned order. Sections 235 to 237 of the Act are allied sections and they form a scheme. They deal with the investigation of the affairs of the company. To find out the true scope of S. 237 (b), it is necessary to take into consideration the provisions contained in S. 235 as well as 236. They read :

"235. Investigation of affairs of company on

application by members or report by Registrar.-The Central Government may appoint one or more competent persons as inspectors to investigate the affairs of any company and to report thereon in such manner as the Central Government may direct,-

(a) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one-tenth of the total voting power therein;

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(2)in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(c) in the case of any company, on a report by the Registrar under sub-section (6), or sub-section (7) read with sub-section (6), of section 234.

236. Application by members to be supported by evidence and power to call for security-An application by members of a company under clause (a) or (b) of section 235 shall be supported by such evidence as the Central Government may require for the purpose of showing that the applicants have good reason for requiring the investigation; and the Central Government may, before appointing an inspector, require the applicants to give security, for such amount not exceeding one thousand rupees as it may think fit, for payment of the costs of the investigation."

The power conferred on the Central Government under S. 235 as well as under s. 237(b) is a discretionary power whereas the Central Government is bound to appoint one or more competent persons as Inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct if the company by special resolution or the Court by order declares that the affairs of the company ought to be investigated by an Inspector appointed by the Central Government [237 (a) (i) (ii)]. It may be noted that before the Central Government can take action under s. 235 certain pre-conditions have to be satisfied. In the case of an application by members of the company under cl. (a) or (b) of S. 235, the same will have to be supported by such evidence as the Central Government may require for the purpose of showing that the applicants have good reasons for requiring the investigation, and the Central Government may, before appointing an Inspector, require the applicant to give security for such amount not exceeding Rs. 1,000 as it may think fit for payment of the costs of the investigation. From the provisions contained in ss. 235 and 236 it is clear that the legislature considered that investigation into the affairs of a company is a very serious matter and it should not be ordered except on good grounds. It is true that the investigation under s. 237(b) is of a fact finding nature. The report submitted by the Inspector does not bind anybody. The Government is not required to act on the basis of that report, the company has to be called upon to have its say in the matter but yet the risk-it may be a grave one-is that the appointment of an Inspector is likely to receive much press publicity as a result of which the reputation and prospects of the com-

pany may be adversely affected. It should not therefore be ordered except on satisfactory grounds.

Before taking action under S. 237(b)(i) and (ii), the Central Government has to form an opinion that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any member or that the company was formed for any fraudulent or unlawful purpose or that the persons concerned in the formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members.

From the facts placed before us, it is clear that the Government had not bestowed sufficient attention to the material before it before passing the impugned order. It seems to have been oppressed by the opinion that it had formed about Shri S. P. Jain. From the arguments advanced by Mr. Attorney, it is clear that but for the association of Mr. S. P. Jain with the appellant-company, the investigation in question, in all probabilities would not have been ordered. Hence, it is clear that in making the impugned order irrelevant considerations have played an important part.

The power under ss. 235 to 237 has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner. The department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore the standard that is prescribed under S. 237(b) is not the standard required of an ordinary citizen but that of an expert. The learned Attorney did not dispute the position that if we come to the conclusion that no reasonable authority would have passed the impugned order on the material before it, then the same is liable to be struck down. This position is also clear from the decision of this Court in Barium Chemicals and Anr. v. Company Law Board and Anr.(1).

It was urged by Mr. Setalvad, learned Counsel for the appellant that cl. (b) of S. 237 prescribes two requirements i.e. (1) the requisite opinion of the Central Government and (2) the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-cl. (1) or that the persons mentioned in sub-cl. (2) were guilty of fraud, misfeasance or misconduct towards the company or any of its members. According to him though the opinion to be formed by the Central Government is subjective, the existence of circumstances set out in cl. (b) is a condition precedent to the formation of such opinion and therefore the fact that the impugned order contains recitals of

(1) [1966] Supp. S.C.R.311

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the existence of those circumstances, does not preclude the court from going behind those recitals and determining whether they did in fact exist and further whether the Central Government in making that order had taken into consideration any extraneous consideration. But according to the learned Attorney the power conferred on the Central Government under cl. (b) of s. 237 is a discretionary power and the opinion formed, if in fact an opinion as required by that section has been formed, as well as the basis on which that opinion has been formed are not open to judicial review. In other words according to the learned Attorney no part of s. 237(b) is open to judicial review, the matter is exclusively within the discretion of the Central Government and the statement that the Central Government had formed the

required opinion is conclusive of the matter.
Courts both in this country as well as in other Commonwealth countries had occasion to consider the scope of provisions similar to s. 237 (b). Judicial dicta found in some of those decisions are difficult of reconciliation.
The decision of this Court in Barium Chemicals' case(1) which considered the scope of s. 237(b) illustrates that difficulty In that case Hidayatullah, J. (our present Chief Justice) and Shelat, J. came to the conclusion that though the power under s. 237(b) is a discretionary power the first requirement for its exercise is the honest formation of an opinion that the investigation is necessary and the further requirement is that "there are circumstances suggesting" the inference set out in the section; an action not based on circumstances suggesting an inference of the enumerated kind will not be valid; the formation of the opinion is subjective but the existence of the circumstances relevant to the inference as the sine qua non for action must be demonstratable; if their existence is questioned, it has to be proved at least prima facie; it is not sufficient to assert that those circumstances exist and give no clue to what they are, because the circumstances must be such -as to lead to conclusions of certain definiteness; the conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct. In other words they held that although the formation of opinion by the Central Government is a purely subjective process and such an opinion cannot be challenged in a court on the ground of propriety, reasonableness. or sufficiency, the authority concerned is nevertheless required to arrive at such an opinion from circumstances suggesting the conclusion set out in sub-cls. (i), (ii) and (iii) of S. 237(b) and the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. Shelat, J. further observed that it is hard to contemplate that the Legislature could have left to the subjective
(1) [1966] Supp. S.C.R. 311

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process both the formation of opinion and also the existence of circumstances on which it is to be founded; it is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose.
On the other hand Sarkar, C.J. and Mudholkar, J. held that the power conferred on the Central Government under S. 237(b) is a discretionary power and no facet of that power is open to judicial review. Our brother Bachawat, J., the other learned Judge in that Bench did not express any opinion on this aspect of the case. Under these circumstances it has become necessary for us to sort out the requirements of s. 237(b) and to see which of the two contradictory conclusions reached in Barium Chemicals' case(1) is in our judgment, is according to law. But before proceeding to analyse s. 237(b) we should like to refer to certain decisions cited at the bar bearing on the question under consideration.
We shall first take up the decisions read to us by the learned Attorney.
In State of Madras v. C. P. Sarathy and Another(2) this Court was called upon to consider the scope of S. 10(1) of the Industrial Disputes Act, 1947. There the question for decision was whether the opinion formed by the State

Government that there existed an industrial dispute is open to judicial review. While dealing with that question this Court observed

> "But it must be remembered that in making a reference under S. 10(1) the Government is doing an administrative act and the fact that it has to form ail opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court, cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination no doubt, it Will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon,

(1) [1966] Supp. S.C.R. 31 1.

7Sup.CI/69-9

(2) [1953] S.C.R. 334

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> and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters."

This interpretation of s. 10(1) is based on the language of that provision as well as the purpose for which the power in question was given and the effect of a reference. That decision cannot be considered as an authority for the proposition that whenever a provision of law confers certain power on an authority on its forming a certain opinion on the basis of certain facts the courts are precluded from examining whether the relevant facts on the basis of which the opinion is said to have been formed had in fact existed. Reliance was next placed on the decision of this Court in Joseph Kuruvilla Vellukunnel v. The Reserve Bank of India and Ors.(1) wherein this Court was called upon to examine the vires -of s. 3 8 (1) and 3 (b) (iii) of the Banking Companies Act, 1949. Kapur, and Shah, JJ. held that the provisions in question are ultra vires the Constitution as the power conferred on the Reserve Bank is an arbitrary, power whereas the majority consisting of Sinha, C.J., Hidayatullah and Mudholkar, JJ. upheld the validity of the provisions on the ground that the power conferred on the Reserve Bank is a reasonable restraint taking into consideration the interests of the public and the position occupied by the Reserve Bank in the financial system of this country We do not think that this decision bears on the point under consideration.

In Hubli Electricity Company Ltd. v. Province of Bombay(2) the Judicial Committee came to the conclusion that the

opinion to be formed by the Provincial Government under s. 4(1) of the Indian Electricity Act, 1910 is a subjective opinion and the same ,cannot be adjudged by applying objective tests. The relevant portion of section 4(1) reads :

> "The Provincial Government may, if in its opinion the public interest so requires, revoke a licence in any of the following cases, namely --
> (a) where the licensee in the opinion of the Provincial Government makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act. . . . ."
> Dealing with the scope of that provision their Lordships observed
> "Their Lordships are unable to see that there is any-
> thing in the language of the sub-section or in the subject
> (1) [1962] Supp.3,S.C.R.632.
> (2) L.R. (1948-49) 76. I.A. 57.
> matter to which it relates on which to found the suggestion that the opinion of the Government is to be subject to objective tests. In terms the relevant matter is the opinion of the government--not the grounds on which the opinion is based. The language leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which the government acted in forming an opinion. Further the question on which the opinion of the government is relevant is not whether a default has been wilful and unreasonably prolonged but whether there has been a wilful and unreasonably pro-longed default. On that point the opinion is the determining matter, and-if it is not for good cause displaced as a relevant opinion-it is conclusive."

It may be remembered that therein the, Judicial Committee was considering a pre-constitutional provision which was not subject to the mandate of Art. 1 9 (1) (g). Further their Lordships were careful enough to observe :

> "that they are unable to see that there is anything in the language of the sub-section or in the subject matter to which it relates on which to found the suggestion that the opinion of the government is to be subject to objec-tive tests."

In other words in their Lordship's opinion the subject matter of a legislation has an important bearing in the interpretation of a provision. We may also add that s. 4(1) of the Electricity Act 1910 stood by itself and in finding out its scope no assistance could have been taken from any other provision in that Act.

In Rabinson v. Minister of Town and Country Planning(1) the declaratory order made by the Minister that he was satisfied that the area comprised in the order should be 'laid out afresh and re-developed as a whole' was held not open to judicial review. The order in question to an extent depended on questions of policy. It is not open for courts to decide questions of policy.

In Point of Ayr Collieries Ltd. v. Lloyd George(2) the Court of -Appeal upheld the contention that - the order made by

the Minister of Fuel and Power under the defence (General) Regulations No. 55 (4) assuming the management of an undertaking was not open to judicial review. In arriving at the decision it is clear that the court was influenced by the decision of the House of Lords in Liversidge v. Anderson(,') and Greene v. Home Secretary (4) which considered the validity of detentions during war time. The decisions cannot serve as real guide for interpreting the provision of law with which we are concerned.

(1) [1947] 1 K.B. 702. (3) [1941] 3 All E.R. 338.
(2) [1943] 2 All E.R. 546. (4) [1941] 3 All E.R. 388.

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We shall now refer to the decisions relied on by the appellant.

As long back as 1891 the House of Lords was called upon to consider the scope of some of the provisions of the Licensing Act 1872 which gave discretion to the Magistrates in granting certain licenses. The question for decision was as to the nature of the discretion granted. Lord Halsbury L. C. speaking for the House observed, in Susannah Sharp v. Wakefield and Ors. (1).

> " 'discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : Rooke's case; according to law, and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular."

In Nakkuda Ali v. M. F. De S. Jayaratna(2) the Judicial Committee in interpreting the words "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer" found in Regulation 62 of the Defence (Control of Textiles) Regulations, 1945 observed :

> "After all, words such as these are commonly found when a legislature or law-making authority confers powers on a minister or official. However read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power. But if the question whether the condition has been satisfied is to be conclusively decided by the man who wields the power the value of the intended restraint is in effect nothing. No doubt he must not exercise the power in bad faith : but the field in which this kind of question arises is such that the reservation for the case of bad faith is hardly more than a formality. Their Lordships therefore treat the words in reg. 62, 'where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer' as imposing a condition that there must in fact exist such reasonable grounds, known to the Controller before he can validly exercise the power of cancellation."

The decision of the House of Lords in Padfield and Ors. v. Minister of Agriculture, Fisheries and Food and Ors.(3) is of considerable importance. Therein the material facts are these :

The appellants in that appeal, members of the south east regional committee of the Milk Marketing Board, made a com-

(3) [1968] 1 All E.R. 694.

plaint to the Minister of Agriculture, Fisheries and Food, pursuant to S. 19(3) of the Agricultural Marketing Act, 1958, asking that the complaint be referred to the committee of investigation established under that enactment. The complaint was that the board's terms and prices for the sale of milk to the board did not take fully into account variations between producers and the cost of bringing milk to a liquid market. In effect the complaint was that the price differential worked unfairly against the producers in the popular south east region, where milk was more valuable, the cost of transport was less and the price of land was higher. There had been many previous requests to the board, but these had failed to get the board, in which the south east producers were in a minority, to do anything about the matter. The Minister declined to refer the-matter to the committee. By letters of May 1, 1964 and March 23, 1965, he gave reasons which included that (in effect) his main duty had been to decide the suitability of the complaint for such investigation but that it was one which raised wide issues and which he did not consider suitable for such investi-gation, as it could be settled through arrangements available to producers and the board within the milk marketing scheme; that he had unfettered discretion, and that, if the complaint were upheld by the committee, he might be expected to make a statutory order to give effect to the committee's recommendations. Section 19(3) (b) of the Agricultural Marketing Act, 1958 read

> "A committee of investigation shall be charged with the duty, if the Minister in any case so directs, of considering, and reporting to the Minister, on any report made by the consumers' committee and any complaint made to the Minister as to the operation of any scheme which, in the opinion of the Minister, could not be considered by a consumers' committee under the last foregoing subsection."

The appeal was allowed by the House of Lords (Lord Morris of Borth-Y-Gest dissenting). Lord Reid and Lord Pearce held that where a statute conferring a discretion on a Minister to exercise or not to exercise a power did not expressly limit or define the extent of his discretion and did not require him to give reasons for declining to exercise the power, his discretion might nevertheless be limited to the extent that it must not be so used, whether by reason of misconstruction of the statute or other reason, as to frustrate the object of the statute which conferred it. Lord Hodson and Lord Upjohn held that although the Minister had full or unfettered discretion under s. 19(3) of the Agricultural Marketing Act, 1958, he was bound to exercise it lawfully viz. not to misdirect himself in law, nor to take into account irrelevant matters, nor to omit relevant matters from consideration.

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> In the course of his speech Lord Hodson made the following observations :
> "If the Minister has a complete discretion under the Act of 1958, as in my opinion, he has, the only question remaining is whether he has exercised it lawfully. It is on this issue that much difference of Judicial opinion has emerged, although there is no divergence of opinion on the relevant law. As Lord Denning M.R. said citing Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (1).

" a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the -matter that he has to consider'

Lord Pearce in his speech observed :

"If all the prima facie reasons seem to point in favour of his taking a certain course to carry out the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason whatever for taking a contrary course, the court may infer that he has no good reasons and that he is not using the power given by Parliament to carry out its intentions. In the present case however the Minister has given reasons which show that he was not exercising his discretion in accordance with the intentions of the Act of 1958.

In the present case it is clear that Parliament attached considerable importance to the independent committee of investigation as a means to censure that injustices were not caused by the operation of a compulsory scheme."

Lord Upjohn observed

"My Lords, on the basic principles of law to be applied there was no real difference of opinion, the great question being how they should be applied to this case. The Minister in exercising his powers and duties conferred on him by statute can only be controlled by a prerogative order which will only issue if he acts unlawfully. Unlawful behaviour by the Minister may be stated with sufficient accuracy for the purposes of the present appeal (and here I adopt the classification of Lord Parker C.J. in the divisional court): (a) by an

(1) [1947] 2, All E.R. 682.

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outright refusal to consider the relevant matter; or (b) by misdirecting himself in point of law, or (c) by taking into account some wholly irrelevant or extraneous consideration, or (d) by wholly omitting to take into account a relevant consideration. There is ample authority for these propositions which were not challenged in argument. In practice they merge into one another and ultimately it becomes a question whether for one reason or another the Minister has acted unlawfully in the sense of misdirecting himself in law, that is, not merely in respect of some point of law but by failing to observe the other headings which I have mentioned."

In Commissioners of Customs and Excise v. Cure and Deeley Ltd.(1) the power given to the Commissioners under S. 33(1) of the Finance Act, 1940 "to make regulations providing for any matter for which provision appears to them to be necessary for the purpose of giving effect to the provisions of this Part of the Act and of enabling them to discharge their functions thereunder . . . . . " was held not to make that authority the sole judge of what its powers were

as well as the sole judge of the way in which it could exercise such powers as it might have. Sachs, J. who spoke for the Court observed the legal position thus :

> "In the first place I reject the view that the words appear to them to be necessary' when used in a statute conferring powers on a competent authority, necessarily make that authority the sole judge of what are its powers as well as the sole judge of the way in which it can exercise such powers as it may have. It is axiomatic that, to follow the words used by Lord Radcliffe in the Canadian case 'the paramount rule remains that every statute is to be expounded according to its manifest or expressed intention'. It is no less axiomatic that the application of that rule may result in phrases identical in wording or in substance receiving quite different interpretations according to the tenor of the legislation under consideration. As an apt illustration of such a result it is not necessary to go further than Liversidge v. Anderson(2) and Nakkuda Ali v. Jayaratne(3) which cases the words 'reasonable cause to believe' and 'reasonable grounds to believe' received quite different interpretations.
>
> To my mind a court is bound before reaching a decision on the question whether a regulation is intra vires to examine the nature, objects, and scheme of the

(1) [1962] 1 Q.B. 340.
(3) [1951] A.C.66.
(2) [1942] A.C. 206
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piece of legislation as a whole and in the light of that examination to consider exactly what is the area over which powers art given by the section under which the competent authority is purporting to act."

In Roncarelli v. Duplessis(1), while dealing with the discretionary power of the Quebec Liquor Commission to cancel a liquor licence this is what Rand, J. observed :

"A decision to deny or cancel such a privilege lies within the 'discretion' of the Commission; but that means that decision is to be based upon a weighing of considerations pertinent to the object of the administration.

In public regulation of this sort there is no such thing as absolute and untrammeled 'discretion' that is that action can be taken on any ground or for any reason that can be suggested to mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. 'Discretion' necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another province, or because of the colour of his hair? The ordinary language of the legislature cannot be so distorted."

In particular we would like to emphasize the observation

that "there is always a perspective within which a statute is intended to operate".

In Read v. Smith (2) it was held that the Governor-General's power under the-Education Act to make such regulations as he "thinks necessary to secure the due administration" of the Act has been held invalidly exercised in so far as his opinion as to the necessity for such regulation was not reasonably tenable.

Coming back to s. 237(b), in finding out its true scope we have to bear in mind that that section is a part of the scheme referred to earlier and therefore the said provision takes its colour from ss. 235 and 236. In finding out the legislative intent we

(1) [1959] S.C.R. (Canada Law Reports) 121.

(2) [1959] New Zealand Law Reports 996.

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cannot ignore the requirements of those sections. ln interpreting S. 237(b) we cannot ignore the adverse effect of the investigation on the company. Finally we must also remember that the section in question is an inroad on the powers of the company to carry on its trade or business and thereby an infraction of the fundamental right guaranteed to its shareholders under Art. 1 9 (1) (g) and its validity cannot be upheld unless it is considered that the power in question is a reasonable restriction in the interest of the general public. In fact the vires of that provision was upheld by majority of the Judges constituting the Bench in Barium Chemicals' case(1) principally on the ground that the power conferred on the Central Government is not an arbitrary power and the same has to be exercised in accordance with the restraints im-posed by law. For the reasons stated earlier we agree with the conclusion reached by Hidayatullah, and Shelat, JJ. in Barium Chemicals'(1) case that the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-cl.(1) or the persons mentioned in sub-cl.(2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the courts. As held earlier the required circumstances did not exist in this case.

Next question is whether any reasonable authority much less expert body like the Central Government could have reasonably made the impugned order on the basis of the material before it. Admittedly the only relevant material on the basis of which the impugned order can be said to have been made is the transaction of sale of preference shares of Albion Plywoods Ltd. At the time when the Government made the impugned order, it did not know the market quotation for the ordinary share of that company as on the date of the sale of those shares or immediately before that date. They did not care to find out that information. Hence there was no material before them showing that they were sold for inadequate consideration. If as is now proved that the market price of those shares on or about May 6, 1960 was only Rs. 11 per share then the transaction in question could not have afforded any basis for forming the opinion required by S. 237(b). If the market price of an ordinary share of that company on or about May 6, 1960 was only Rs. 1

1 it was quite reasonable for the Directors to conclude that the price of the ordinary shares is likely to go down in view of the company's proposal to put on the mar-
(1) [1966] Supp. S.C.R. 311.
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ket another 50,000 shares as a result of the conversion of the preference shares into ordinary shares. We do not think that any reasonable person much less any expert body like the Government, on the material before it, could have jumped to the conclusion that there was any fraud involved in the sale of the shares in question. If the Government had any suspicion about that transaction it should have probed into the matter further before directing any investigation. We are convinced that the precipitate, action taken by the Government was not called for nor could be justified-on the basis of the material before it. The opinion formed by the Government was a wholly irrational opinion. The fact that one of the leading Directors of the appellant company was a suspect in the eye of the Government because of his antecedents, assuming without deciding, that the allegations against him are true, was not a relevant circumstance. That circumstance should not have been allowed to cloud the opinion of the Government. The Government is charged with the responsibility to form a bona fide opinion on the basis of relevant material. The opinion formed in this case cannot be held to have been formed in accordance with law.
In the result we allow these appeals and set aside the impugned order. The respondents shall pay the costs of the appellant both in this Court as well as in the High Court (Hearing fee one set).
Bachawat, J. The Central Government is authorized to appoint an inspector to investigate the affairs of a company under s. 235 clauses (a) and (b) of the Companies Act, 1956 on the applications of its members, under s. 235 clause (a) on the report of the Registrar, under s. 237 clause (a) sub-clause (i) if required by a special resolution of the company, under s. 237 clause (a) sub-clause (ii) if directed by the court and under s. 237 clause (b) if the Government is of the opinion that there -are circumstances suggesting malpractices in relation to the company's affairs. The investigation is mandatory under s. 235 clause (a) if it is required by the company's special resolution, see R. v. Board of Trade Exp. St. Martin Preserving Co. Ltd.(2) or if the Court so directs. The Court has a discretion to direct the investigation on being satisfied that the affairs of the company should be investigated, Re Miles Aircrafts Ltd., (No. 2)(2). The investigation is a fact finding inquiry and its object is to ascertain whether in fact malpractices have been committed in relation to the company's affairs, see Raja Narayanlal Bansilal v. Manak Phiroz Mistry & Anr.(3). On a consideration of the inspector's report, the Government can take appropriate action against the delinquents under ss. 242, 243 and 244.
[1955] 1 Q.B,693,515. (2) [1948] W.N.178.
(3) [1961] 1 S.C.R.417,430-6.
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Section 237(b) provides that the Central Government may appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct, "if, in the opinion of the Central Government, there are circumstances suggesting-
(i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose,

or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose;
(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its member; or
(iii) that the members of the company have not been given, all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, the managing agent, the secretaries and treasurers or the manager,. of the company."
The conditions for the exercise of the statutory power are clearly stated in s. 237(b). It is well to bear in mind, firstly, that: v. 237(b) confers an administrative and not a judicial power; secondly, that the power is discretionary; thirdly, that the object of the investigation is to find out whether in fact fraud etc., have been committed by persons in relation to the company's affairs; fourthly, that the condition for making the order is the opinion;, of the Central Government that there are circumstances suggesting fraud etc., and lastly that there is no appeal from such opinion to the Court.
The law recognises certain well recognised principles within which the discretionary power under s. 237(b) must be exercised. There must be a real exercise of the discretion. The authority must be exercised honestly and not for corrupt or ulterior purposes. The authority must form the requisite opinion honestly and after applying its mind to the relevant materials before it. In exercising the discretion the authority must have regard only to circumstances suggesting one or more of the matters specified in sub-clauses (i), (ii) and (iii). It must act reasonably and not capriciously or arbitrarily. It will be an absurd exercise of discretion, if, for example, the authority forms the requisite opinion on the ground that the director in charge of the company is a member of a particular community. Within these narrow limits the opinion is not conclusive and can be challenged in a court of law. Had s. 237(b) made the opinion, conclusive, it might be open to challenge as violative of Arts. 14 and 19 of'
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the Constitution, see : Corporation of Calcutta v. Calcutta Tramways Co. Ltd.,(1) distinguishing Joseph Kuruville Veilukunnel v. The Reserve Bank of India(2). Section 237(b) is not violative ,of Arts. 14 and 19.
If it is established that there were no materials upon which the authority could form the requisite opinion the court may infer that the authority did not apply its mind to the relevant facts. The requisite opinion is then lacking and the condition precedent to the exercise of the power under s. 23 7 (b) is not fulfilled. On this ground I interfered with the order under s. 237 (b) in Barium Chemicals v. Company Law Board(3).
Let me recall the words of s. 237(b) : "If, in the opinion of the Central Government, there are circumstances suggesting..... The relevant matter is "the opinion of the Central Government". The condition precedent to the exercise of power under S. 237(b) is the opinion of the Government and not the existence of the circumstances suggesting one or more of the specified matters. To hold that the factual existence of such matters is a condition precedent to the exercise of the power is to re-write the section. Section 237(b) must be interpreted in the light of

its own language and subject-matter. We miss its real import if we begin by referring to the construction put by other judges on other statutes perhaps similar but not the same. The decisions are useful when they lay down principles of interpretation or give the meaning of the words which have become terms of art.

The decided cases show that normally, if the opinion of an administrative agency is the condition precedent to the exercise ,of the power, the relevant matter is the opinion of the agency and -not the grounds on which the opinion is founded. In Hubli Electricity Company v. Province of Bombay(4) the Privy Council had occasion to construe S. 4(1)(a) of the Indian Electricity Act (TX of 1910) which read :

"The Provincial Government may, if in its opinion the public interest so requires, revoke a licence in any of the following cases, namely,

(a) where the licensee in the opinion of the Provincial Government makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act."

The Government acting under S. 4(1)(a) revoked the licence. The licensee filed a suit for a declaration that the order was invalid. The Government pleaded that it had formed the opinion as mentioned in S. 4 (1) (a), and contended that on the true construction of the Act the Court was not entitled to go behind its

(1) [1964] 5S.C.R.25.
(3) [1966] 'Supp. S.C.R. 311, 343.
(2) [1962] Supp. 3 S.C.R. 632.
(4) L.R.76 I.A. 57.

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opinion. The appellant submitted that the opinion referred to in s. 4(1) (a) was not the subjective opinion of the Government but an opinion subject to objective, tests. Lord Uthwatt said .-

> "Their Lordships now turn to the question of construction of s. 4, sub-s. 1 (a). Their Lordships are unable to see that there is anything in the language of the sub-section or in the subject-matter to which it relates on which to found the suggestion that the opinion of the Government is to be subject to objective tests. In terms the relevant matter is the opinion of the Government not the grounds on which the opinion is based. The language leaves no -room for the relevance of a judicial examination as to the sufficiency of the grounds on which the Government acted in forming an opinion. Further, the question on which the opinion of the Government is relevant is not whether a default has been wilful and unreasonably prolonged but whether there has been a wilful -and unreasonably prolonged default. On that point the opinion is the determining matter, -and-if it is not for good cause displaced as a relevant opinion-it is conclusive."

The opinion is displaced as a relevant opinion if it could not be formed by any sensible person on the material before him. The reason is that the Court may then infer that the authority either did not honestly form the opinion or that in forming it, it did not apply its mind to the relevant facts. In Ross-Clunis V. Papadopoullos & Ors.(1) the commissioner of Limassol imposed a fine on the Greek Cypriot inhabitants in the area after holding an inquiry under regulation 5 of the Cyprus Emergency Powers (Collective

Punishment) Regulations, 1955 which provided that "in holding inquiries under these regulations, the commissioner shall satisfy himself that the inhabitants of the said area are given adequate opportunity of understanding the subject-matter of the inquiry and making representations thereon." The Privy Council upheld the commissioner's order and set aside the order, of certiorari quashing it. With regard to the contention of the commissioner that the only duty cast on him was to satisfy himself of those facts, that the test was a subjective one and that in the absence of bad faith his statement that he was so satisfied was a complete answer to the argument that he had failed to comply with reg. 5. Lord Morton said :-"Their Lordships feel the force of this argument, but they think that if it could be shown there were no grounds on which the appellant could be satisfied, a court might infer either that he did not honestly form that view or that, in forming it, he could not have applied his mind to the

(1) [1958] 2 All E.R. 23.

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relevant facts. In the present case, however, there were ample grounds on which -the appellant could feel 'satisfied' of the matters mentioned in reg. 5 (2)" see -also : State of Maharashtra v. B. K.Takkamore(1).

The other decisions cited at the bar are not helpful on the construction of s. 237(b). In construing statutory provisions of this description, the actual words used and their subject-matter are of the utmost importance. Thus if the statute provides that "if in the opinion of the Provincial Government it is necessary or expedient to do so the Provincial Government may, by order in writing requisition any land for any public purpose", the existence of the public purpose but not its necessity or expediency is justiciable, see : Province of Bombay v. K. S. Advani(2). The reason is that the factual existence of the public purpose is by the language of the section a condition precedent of the requisition; and now in view of Art. 31(2) of the Constitution, this is a constitutional requirement irrespective of the language of the section. Where the statute authorises the executive action "if AB has reasonable grounds to believe" the certain circumstance or thing, it means what it says. AB must in fact have reasonable grounds for believing a circumstance or a thing, see : Nakkuda Ali v. M. F. De S. Jawaratne(3). But in an emergency legislation, such a phrase was construed to impose only the condition that AB honestly thought he had reasonable grounds for belief, see : Liversidge v. Sir John Anderson(4) but such a construction need not invariably be given, see King Emperor v. Vimlabai(5). In Carltona Ltd. v. Commissioner of Works(6) the Court held -that an emergency legislation authorising requisition of premises, "if it appears to that authority to be necessary or expedient so to do in the interest of public safety, etc.", the court could not investigate the grounds or reasonableness of the decision in the absence of an allegation of bad faith. These decisions on emergency legislation stand on a peculiar footing. 'Me courts are not inclined to fetter executive action when the country is being raided by the enemy. They show that the subject-matter of the statute has a material bearing on its construction. To give another example, the courts are not inclined to interfere with orders of reference of industrial disputes, see : State of Madras v. C. p. Sarathy and another(7). Swadeshi Cotton Mills Co. Ltd. v. State of U.P. & Ors. (8) but even such orders -are not immune from judicial review, see State of Bombay v. K. P.

Krishnan & Ors.
(1) [1967] 2S.C.R.583,585,588.(2) [1950] S.C.R.621.
(3) [1951] A.C.66,77. (4) [1942] A.C. 206.
(5) L.R. 73. I.A. 144. (6) [1943] All E.R. 560.
(7) [1953] S.C.R. 334, 346-47.(8) [1962] 1 S.C.R. 422.
(9) [1961] 1 S.C.R. 227.

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Let us now turn to the facts of the present case. The Central Government passed the impugned order under S. 237 (b) on April 11, 1963. The order recited

"Whereas the Central Government is of the opinion that there are circumstances suggesting that the business of Rohtas Industries Limited,, a company having its registered office at Dalmianagar, Bihar, (hereinafter referred to as the said company) is being conducted with intent to defraud its creditors, members or other persons and the persons concerned in the management of its affairs have in connection therewith been guilty of fraud, misfeasance, or other misconduct towards the said company or its members."

The order then stated that in exercise of the powers conferred by s. 237 (b) sub-clauses (i) and (ii) of the Companies Act, 1956 the Central Government appointed Shri S. Prakash Chopra as inspector to investigate the affairs of the said company for the period April 1, 1958 up to date and should he consider it necessary also for the period prior to April 1, 1958.

Learned Attorney-General conceded that the affidavit of R. C. Dutt affirmed on August 25, 1965 and the further affidavit of Sisir Kumar Datta on October 4, 1968 pursuant to the order of this Court dated September 9, 1968 disclosed all the materials which were before the Central Government when it passed the order dated April 11, 1963. He further conceded that the only circumstance suggesting fraud etc., in relation to the company's affairs after April 1, 1958 was the transaction relating to 3,000 preference shares in Albion Plywoods Ltd., on May 6, 1960 and that but for this transaction the Government would not have passed the impugned order. The materials before the Government with regard to the transaction were as follows : Albion Plywoods Ltd., had issued 50,000 ordinary shares of Rs. 10 and 5,000 5-1/2% cumulative redeemable preference shares of Rs. 100. 2,000 preference shares were held by New Central Jute Mills Company Ltd., and 2,000 preference shares were held by Rohtas Industries Ltd. New Central Jute Mills Co. Ltd. and the Rohtas Industries Ltd., were both controlled by the Sahu Jains or Sri S. P. Jain. The preference shares were redeemable at the option of the Albion Plywoods Ltd., at any time after 10 years from the date of their issue on September 7, 1957. In April 1960 New Central Jute Mills Co., Ltd., sold 2,000 preference shares held by it to M/s. Bagla & Co., and M/s. Poddar Sons at Rs. 100 per share against cash payment. On May 6, 1950 Rohtas Industries Ltd., sold 3,000 preference shares held by it to M/s. Bagla & Co., at Rs. 100 per share. On the dates when the sales were effected the management of New Central Jute Mills Co. Ltd., and Rohtas Industries Ltd., knew that the preference shares would be converted into ordinary shares. As a matter of fact Albion Plywoods Ltd., by a special resolution passed on May 20, 1960 converted 5,000

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preference shares into 50,000 ordinary shares and M/s. Sahu Jains were appointed as its managing agents. The market price of an ordinary share as shown in the Indian Finance was Rs. 14 on May 13, 1960, Rs. 15-44 on May 20, 1960, Rs. 17 on May 27, 1960, Rs. 17 on June 10, 1960 and Rs. 14 on

June 17, 1960. The charge is that the management of Rohtas Industries Ltd., sold the preference shares at an under value with a view to benefit the managing agents, their friends and brokers knowing fully well that on conversion into ordinary shares they would fetch a much higher price. The charge was originally made with regard to the sale of 2,000 preference shares held by New Central Jute Mills Co. Ltd., in a letter dated January 27, 1961 addressed by a complainant to the Secretary to the Government of India, department of company law administration. In course of investigation into this charge, the regional director, company law administration, Calcutta, discovered that Rohtas Industries Ltd., also had sold 3,000 preference shares to M/s. Bagla & Co., on May 6, 1960. The annual return filed by Albion Plywoods Ltd., on May 30, 1960 showed that 32,000 ordinary shares in the company were then held by the members of the Bagla family. These materials are to be found in the complaint dated January 27, 1961 with regard to the sale of 2,000 preference shares by New Central Jute Mills Co. Ltd., and the correspondence passed between the Secretary to the Government of India, ministry of commerce and industry, department of company law administration, New Delhi and the regional director, company law administration, Calcutta. On the subject of the sale of preference shares there was no other material before the Government when it passed the order dated April 11, 1963.

Several things are to be noticed in this connection. No complaint with regard to the impropriety of the sale of the preference shares held by Rohtas Industries Ltd. was made to the Central Government by any of its creditors or members. There was no material before the Central Government suggesting that M/s. Bagla & Co., held the preference shares as benamidars of M/s. Sahu Jains or their friends. On May 30, 1960 M/s. Bagla & Co., continued to hold 32,000 ordinary shares in Albion Plywoods Ltd. it is not suggested that the market price of preference shares on May 6, 1960 was more than Rs. 100. The market price of the ordinary shares fluctuated between Rs. 14 and Rs. 17 between May 13 and June 17, 1960. But there was no material showing that the huge block of 50,000 ordinary shares issuable on conversion of 5,000 preference shares could be sold in the market for more than Rs. 10 per share. No attempt was made to find out the market price of ordinary shares on May 6, 1960. It now transpires that on that date the price was Rs. 11. The charge that the sale of the Preference shares was fraudulent or improper was not corn-

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municated to the Rohtas Industries Ltd., nor were they asked to give their explanation on the subject.

I think it is a border line case. The Court has no power to review the facts as an appellate body nor can it substitute its opinion for that of the Government. But the curious feature of the case is that on reading the affidavits we are left with the impression that the Government did not rely on the transaction relating to the sale of 3,000 preference shares of Albion Plywoods Ltd., as suggesting fraud. It appears that the Government passed an order under S. 237(b) appointing an inspector to investigate the affairs of New Central Jute Mills Co. Ltd. but it seems that the Government did not rely on the sale of 2,000 preference shares by the management of this company as a relevant material for passing the order, see the report of New Central Jute Mills v. Finance Ministry(1) at pages 160-1. On the whole, I am inclined to think that there was no material before the Government on which it could form the opinion that there

were circumstances suggesting fraud etc., as mentioned in the impugned order dated April 11, 1963. 1 -am, therefore, constrained to hold that it formed the opinion without applying its mind to the materials before it. The opinion so formed is in excess of its powers and cannot support the order under S. 237(b).

In the result, I agree to the order proposed by Hegde, J.

V.P.S. Appeals allowed..

(1) A.I.R. 1966 Cal. 151.

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