PETITIONER:
THE BARIUM CHEMICALS LTD. AND ANR.

Vs.

RESPONDENT:
THE COMPANY LAW BOARD AND OTHERS

DATE OF JUDGMENT:
04/05/1966

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SARKAR, A.K. (CJ)
HIDAYATULLAH, M.
BACHAWAT, R.S.
SHELAT, J.M.

CITATION:
1967 AIR 295 1966 SCR 311
CITATOR INFO :

R	1969 SC 707	(16,19,20,39,46)
RF	1970 SC 564	(26,228,229,235)
R	1970 SC1789	(14)
RF	1972 SC1816	(18)
F	1974 SC1957	(12)
R	1974 SC2105	(10)
RF	1977 SC 183	(26)
R	1978 SC 597	(222)
D	1982 SC 149	(1245)
E	1984 SC 273	(45)
F	1984 SC1182	(11)
C	1984 SC1271	(26)
R	1986 SC 872	(119)
R	1986 SC2173	(12)
R	1986 SC2177	(45)
E&D	1987 SC 294	(38)
R	1990 SC 334	(105)
RF	1990 SC1277	(51)
RF	1991 SC1557	(21)
RF	1992 SC1020	(26)

ACT:
Companies Act, 1956, ss. 10E, 234, 235, 236 and 237-scope of Whether s. 237(b) violative of Articles 14 and 19(1) (g) of the Constitution.

HEADNOTE:
The Company Law Board was constituted under Section 10E of the Companies Act, 1956, and the Central Government delegated some of its powers under the Act, including those under Section 237, to the Board. The Government also framed rules under Section 642(1) read with Section 10E(5) called the Company Law Board (Procedure) Rules 1964, Rule 3 of which empowered the Chairman of the Board to distribute the business of the Board among himself and other member or members and to specify the cases or classes of cases which were to be considered jointly by the Board. On February 6, 1954, under the power vested in him by Rule 3 the Chairman passed an order specifying the cases that had to be

considered jointly by himself and the only other member of the Board and distributing the remaining business between himself and the member. Under this order the business of ordering investigations under Sections 235 and 237 was allotted to himself to be performed by him singly.

On May 19, 1965 an order was issued on behalf of the Company Law Board under Section 237(b) of the Companies Act. appointing four inspectors to investigate the affairs of the appellant company, on the ground that the Board was of the opinion that there were circumstances suggesting that the business of the appellant company was being conducted with intent to defraud its creditors, members or any other persons and that the persons concerned in the management of the affairs of the company had in connection therewith been guilty of fraud, misfeasence and other misconduct towards the company and its members.

Soon afterwards the appellants filed a petition under Art. 226 of the Constitution for the issue of a writ quashing the order of the Board on the grounds, inter alia, that the order had been issued mala fide that there was no material on which such an order could have been made, etc.

One of the affidavits filed in reply to the petition was by the ,Chairman of the Company Law Board, in which it was contended, inter alia, that there was material on the basis of which the impugned order was issued and he had himself examined this material and formed the necessary opinion within the meaning of sec. 237(b) before the issue of the order; and that it was not competent for the court to go into the question of the adequacy or otherwise of such material. In the course of replying to some of the allegations in the petition it was stated in paragraph 14 of the affidavit, however, that from memoranda received from some ex-directors of the company and other examination it appeared, inter alia, that there had been delay, bungling and faulty planning of the company's main project ,resulting in double expenditure; that the company had incurred huge losses; there had been a sharp fall in the price of the company's

SCI-22

312

shares; and some eminent persons had resigned from the Board of Directors of the company because of differences with the Managing Director on account of the manner in which the affairs of the company were being conducted.

The appellant's petition was dismissed by the High Court.

In the appeal to this Court it was contended on behalf of the appellants:

(1) That the order was made made fide on account of the competing interests of a firm in which the Minister in charge of the department was interested and also because of his personal hostility against the second petitioner who was the managing director of the company; that the High Court had erred in deciding the petition on the footing that the first respondent Board was an independent authority and that it was its Chairman who on his own had formed the requisite opinion and passed the order and therefore the motive or the evil eye of the Minister was irrelevant; the High Court also erred in failing to appreciate that even though the impugned order was by the Chairman, as under s. 10E(6) it had to receive and in fact received the Minister's agreement, if the Minister's mala fides were established, that would vitiate the order; furthermore, in the circumstances of the case. the High Court ought to have allowed the appellants an opportunity to establish their case of mala fide by the cross-examination of the Minister and the Chairman, both of

whom had filed affidavits.
(2) That clause (b) of Section 237 required two things: (i) the requisite opinion of the Central Government, in the present case, of the Board, and (ii) the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause (i) or that the persons mentioned in sub-clause (ii) were guilty of fraud, misfeasance or misconduct towards the company or any of its members; though the opinion to be formed is subjective, the existence of circumstances set out in cl. (b) is a condition precedent to the formation of such opinion and therefore even if the impugned order were to contain a recital of the existence of those circumstances, the court can go behind that recital and determine whether they did in fact exist, that even taking the circumstances said to have been found by the respondent Board, they were extraneous to see. 237(b) and could not constitute a basis for the impugned order.
(3) That the impugned order was in fact made on the basis of allegations contained in memoranda submitted by four ex-directors of the company who continued to be shareholders; and by ordering an investigation under s. 237(b) the respondent Board had in effect enabled these shareholders to circumvent the provisions of s. 235 and S. 236. On this ground also the impugned order was therefore made mala fide or was otherwise invalid.
(4) That the impugned order was in any case bad as it was passed by the Chairman of the Respondent Board alone acting under rules under which such a power was conferred in contravention of the provisions of Section 10E. The power under s. 237 was delegated by the Central Government to the Board as a whole and could not in turn be sub-delegated to the Chairman alone in the absence of a provision such as sub-sec. (4A) added to sec. 10E after the impugned order was issued, and which now enabled the solidarity of the Board to be broken. Such sub-delegation could not be done in accordance with rules made under s. 10E(5) which merely enabled the procedure of the Board to be regulated.
313
(5) That the impugned order was bad because Section 237(b) itself was bad as offending against Arts. 14 and 19 of the Constitution.
HELD: (By Hidayatullah. Bachawat and Shelat, JJ., Sarkar C.J. and Mudholkar J. dissenting): The impugned order must be set aside.
(1) (By the Court): The respondents had failed to show that the impugned order was passed mala fide. L330 E; 335 B-C; 342 F; 354 F-G].
(Per Sarkar C.J. and Mudholkar J.3: The decision to order the investigation was taken by the Chairman of the respondent Board and there was nothing to indicate that in arriving at that decision he was influenced by the Minister. If the decision arrived at by the Chairman was an independent one, it could not be said to have been rendered mala fide because it was later approved by the Minister. [320 D].
In a proceeding under Art. 226 of the Constitution, the normal rule is, as pointed out by this Court in The State of Bombay v. Purshottam Jog Naik [1952] S.C.R. 674, to decide disputed questions on the basis of affidavits and that it is within the discretion of the High Court whether to allow a person who has sworn an affidavit before it to be cross-examined or not. The High Court having refused permission for the cross-examination, it would not be appropriate for this Court, while hearing an appeal. by special leave, to interfere lightly with the exercise of its discretion. [320

G-H; 321 A].
(Per Shelat J.): The allegations of mala fides in the petition were not grounded on any knowledge but only on "reasons to believe". Even for their reasons to believe, the appellants had not disclosed any information on which they were founded. No particulars of the main allegations were given. Although in a case of this kind it would be difficult for a petitioner to have personal knowledge in regard to an averment of mala fides, where such knowledge is wanting, he must disclose his source of information so that the other side gets a fair chance to verify it and make an effective answer. In the absence of tangible materials, the only answer which the respondents could array against the allegations as to mala fides would be one of general denial. [352 D-H].
In a petition under Art. 226, there is undoubtedly ample power in the High Court to order attendance of a deponent in court for being cross-examined. Where it is not possible for the court to arrive at a definite conclusion on account of there being affidavits on either side containing allegations and counter-allegations, it would not only be desirable but in the interest of justice the duty also of the court to summon a deponent for cross-examination in order to arrive at the truth. However, the High Court was rightly of the view that in the present case even if the two deponents were to be called for cross-examination, they could in the absence of particulars of allegations of mala fides and the other circumstances of the case, only repeat their denials in the affidavits of the allegations in the petition and therefore such cross-examination would not take the court any further than the affidavits. [353 D-H].
(2) (Per Hidayatullah, Bachawat and Shelat JJ. Sarkar, C. J. and Mudholkar J. dissenting,):The circumstances disclosed in paragraph 14 of the affidavit must be regarded as the only materials on the basis of which the respondent Board formed the opinion before ordering an investigation under Section 237(b). These circumstances could not reasonably suggest that the business of the company was being conducted to defraud the creditors, members or other
L/S5SCI-22(a)
314
persons or that the management was guilty of fraud towards the company and its members; they were therefore, -extraneous to the matters mentioned in s. 237(b) and the impugned order was ultra vires the Section. [339 A-D, G-H; 340 A; 342 G-H; 343 AC; 365 D-E; 367 A-C].
(Per Hidayatullah J.): The power-under Section 237(b) in a discretionary power and the first requirement for its exercise is the 'honest formation of an opinion that an investigation is necessary. ,The next requirement is that "there are circumstances suggesting" the inferences stout in the Section. An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If their existence is questioned, it has to be proved at least prima facie. It is not sufficient to assert, that the 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 or the withholding of information of a particular kind. [335 F-H; 336 G-H]

An examination of the affidavit filed by the Chairman of the respondent Board showed that the material examined by the Chairman merely indicated the need for a deeper probe. This was not sufficient. The material must suggest certain inferences and not the need for "a deeper probe". The former is a definite conclusion the 'latter a mere fishing expedition. [338 E-H].

(Per Shelat J.): Althouugh the formation of opinion by 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 what is set out in sub-clauses (i), (ii) or (iii) of s. 237 (b). The expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. It is hard to contemplate that the legislature could have left to the subjective 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. If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the matters enumerated in s. 237 (b) the opinion is challengeable on the ground 'of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute. [362 H; 363 A-G].

(Per Sarkar C.J., and Mudholkar J.. dissenting): An examination of section 237 would show that cl. (b) thereof confers a discretion upon the 'Board to appoint an Inspector to investigate the affairs of a company. The words "in the opinion of" govern the word "there are circumstances suggesting" and not the words "may do so". The words 'circumstances' and 'suggesting' cannot be dissociated without making it impossible for the Board to form an 'opinion' at all. The formation of an opinion must, 'therefore, be as to whether there are circumstances suggesting the existence of one or more of 'the matters in sub-cls. (i) to (iii) and not about anything else. The opinion must of course not have been arrived at mala fide. To say that the, opinion to be formed must be as to the necessity

315

of making an investigation would be making a clear departure from the language in which s. 237(b) is couched. It is only after the formation of certain opinion by the Board that the stage for exercising the discretion conferred by the provision is reached. The discretion conferred to order an investigation is administrative and not judicial since its exercise one way or the other does not affect the rights of a company nor does it lead to any serious consequences as, for instance, hampering the business of the company. As has been pointed out by this Court in Raja Narayanalal Bansilal v. Maneck Phiroz Mistry and Anr. [1961] 1 S.C.R. 412, the investigation undertaken under this provision is for ascertaining facts and is thus merely exploratory. The scope for judicial review of the action of the Board must, therefore be strictly limited. If it can be shown that the Board had in fact not formed an opinion its order could be successfully challenged. There is a difference between not

forming an opinion at all and forming an opinion upon grounds, which, if a court could go into that question at all, could be regarded as inapt or insufficient or irrelevant.

The circumstances set out in paragraph 14 of the affidavit of the Chairman of the respondent Board were nothing more than certain conclusions drawn by the Board from some of the material which it had before it. Moreover, the expression "inter alia" used by the Chairman would show that the conclusions set out by him specifically were not the only ones which could be drawn from the material before the Board. It would not therefore be right to construe the affidavit to mean that the only conclusions emerging from the material before the Board were those set out in paragraph 14. [352 A-E].

(3) (Per Sarkar C. J. and Mudholkar J.): As it could not be said that the investigation had been ordered either at the instance of 4 ex-directors of the company or on the sole basis of the memoranda submitted by them, there was no contravention of the provisions of Sections 235 and 236 of the Act. [328 C, E].

(4) (Per Sarkar C. J., Mudholkar and Bachawat JJ., Hidayatullah and Shelat JJ., dissenting): Rule 3 of the Company Law Board (Procedure) Rules, 1964, and the order dated April 6, 1964 made pursuant thereto distributing the business of the Board, were both valid. The impugned order was not therefore invalid because it was made by the Chairman alone and not by the Board. [330 C. D; 342 B-C].

(Per Sarkar C.J. and Mudholkar J.): Bearing in mind the fact that the power conferred by Section 237(b) is merely administrative, the allocation of the business of the Board relating to the exercise of such power must be regarded as a matter of procedure. Strictly speaking the Chairman to whom the business of the Board is allocated does not become a delegate of the Board at all. He acts in the name of the Board and is no more than its agent. But even if he is looked upon as a delegate of the Board and, therefore, sub-delegate vis-avis the Central Government, he would be as much subject to the control of the Central Government as the Board itself, for sub-s. (6) of s. 10E provides that the Board shall, in the exercise of the powers delegated to it, be subject to the control of the Central Government and the order distributing the business was made with permission of the Central Government. Bearing in mind that the maxim delegates non protest delegable sets out what is merely a rule of construction, subdelegation can be sustained if permitted by an express provision or by necessary implication. Where, as here, what is sub-delegated is an administrative power and control over its exercise is retained by the nominee of Parliament, that is, here the Central Government, the power to make a delegation may be inferred, [329 F-H; 330 A-C].

316

(Per Bachwat J.): The function under s. 237(b) involves the exercise of a discretion. Prima facie all the members of the Board acting together were required to discharge this function and they could not delegate their duty to the Chairman. However, under ss. 10E(5) and 642(1), the Central Government may frame rules regulating the procedure of the Board and generally to carry out the purpose of the Act. In the context of s. 10E, the rule making power should be construed liberally. The Central Government has power to constitute the Company Law Board, to delegate its function to the Board and to control the Board in the exercise of its delegated functions. In this background, by conferring on

the Central Government the additional power of framing rules regulating the procedure of the Board and generally to carry out the purposes of s. 10E Parliament must have intended that the internal Organisation of the Board and the mode and manner of transacting its business should be regulated entirely by rules framed by the Government. The Government had, therefore, power to frame the Company Law Board (Procedure) Rules. 1964 authorising the Chairman to distribute the business of the Board. In the exercise of the power conferred by this rule, the Chairman assioned the business under s. 237 to himself. The Chairman alone could, therefore, pass the impugned order. [341 F-H; 342 A-C].

(Per Hidayatullah J.): The new sub-section 4A of Section 10E, which was not there when the impugned order was made. enables the work of the Board to be distributed among members, while sub-s. (5) merely enables the procedure of the Board to be regulated. These are two very different things. One provides for distribution of work in such a way that each constituent part of the Board, properly autho-rised. becomes the Board. The other provides for the procedure of the Board. What is the Board is not a question which admits of solution by procedural rules but by the enactment of a substantive provision allowing for a different delegation. Such an enactment has been framed in relation to the Tribunal constituted under s. 10B and has now been framed under s. 10E also. The new sub-section involves a delegation of the powers of the Central Government to a member of the Board which the Act previously allowed to be made to the Board only. The statute, as it was formerly, gave no authority to delegate if differently or to another person or persons. When it spoke of procedure in sub-section (5) it spoke of the procedure of the Board As constitlited. The lacuna in the Act must have felt; otherwise there was no need to enact sub-section (4A), [334 B-E].

(Per Shelat T.): The statute having permitted the delegation of powers to the Board only as the statutory Authority the powers so delegated have to be exercised by the Board and not by its components. To authorise its Chairman to hand over those functions and powers to the. Board only as the statutory Authority, the powers so by the Act. The effect of r. 3 and the order of distribution of work made in pursuance thereof was not laying down a procedure but au-thorising and, making a sub-delegation in favour of the members. The only procedure which the Government could prescribe was the procedure in relation to Board the manner in which it should discharge and exercise the functions and Powers delegated to it, but it could not make a provision which under the cloak of procedure authorised sub-delegation. [369 F-H; 370 A, B].

(5) (By the Court): The provisions of Section 237(b) were not violative of Articles 14 and 19 of the Constitution. [328 F-G; 342 D-F; 371 H].

Sections 234, 235, 236 and 237(b) gave power to different authorities i.e. the Registrar and the Government, provided powers which

317

are different in extent and nature, exercisable in sets of circumstances and in a manner different from one another. Therefore, there is no question of discriminatory power having been vested in the Government under these Sections to pick and choose between (one company and the other. [370 G, H].

When investigation is ordered, there would be inconvenience in the carrying on of the business of the company. It might

also perhaps shake the credit of a company. But an investigation directed under section 237(b) is essentially of an exploratory character and it is not as if any restriction is placed on the right of the concerned company to carry on its business and no restrictions are imposed on those who carry on the company's affairs. Even if it is regarded as a restriction, it is not possible to say that it is not protected as a reasonable restriction under Clause 6 of Art. 19(1). [371 B-D].
Case law referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 381 of 1966.
Appeal by special leave from the judgment and order dated October 7, 1965 of the Punjab High Court (Circuit Bench) at Delhi in Civil Writ No. 1626-C of 1965.
M. C. Setalvad, R. K. Garg and S. C. Agarwala, for the appellants.
C. K. Daphtary, Attorney-General, B. R. L. Iyengar, R. K. P. Shankardass and R. H. Dhebar, for respondents Nos. 1 and 3 to 7.
S. Mohan Kumaramangalam, C. Ramakrishna and A. V. V. Nair, for respondent No. 2.
The dissenting Opinion Of SARKAR, C.J. and MUDHOLKAR., J. was delivered by MUDHOLKAR, J HIDAYATULLAH. BACHAWAT and SHELAT JJ. delivered separate judgments allowing the Appeal.
Mudholkar, J. On May 19, 1965 Mr. D. S. Dang, Secretary of the Company Law Board issued an order on behalf of the Company Law Board made under s. 237 (b) of the Companies Act, 1956 appointing 4 persons as Inspectors for investigating the affairs of the Barium Chemicals Ltd., appellant No. I before us, since its incorporation in the year 1961 and to report to the Company Law Board inter alia "all the irregularities and contravention in respect of the provisions of the Companies Act, 1956 or of any other law for the time being in force and the person or persons responsible for such irregularities and contravention." The order was made by the Chairman of the Board, Mr.. R. C. Dutt on behalf of the Board by virtue of the powers conferred on him by certain rules to which we shall refer later. On June 4, 1965 the Company preferred a writ petition under Art. 226 of the Constitution in the Punjab High Court for the issue of a writ of mandamus or other appropriate writ, direction or order quashing the order of the Board dated May 19, 1965. The Managing Director, Mr. Balasubramanian joined in the petition as petitioner No. 2. The writ petition is directed against 7 respondents, the first of which is the
318
Company Law Board. The second respondent is Mr. T. T. Krishnamachari, who was at that time Minister for Finance in the Government of India. The Inspectors: appointed are respondents 3 to 6 and Mr. Dang is the 7th respondent. Apart from the relief of quashing- the order of May 19, 1965 the appellants sought the' issue of a writ restraining the Company Law Board and the Inspectors from giving effect to the order dated May 19, 1965 and also sought some other incidental reliefs. The order of the Board was challenged on 5 grounds which are briefly as follows:

(1) that the order was made mala fide;
(2) that in making the order the Board had acted on material extraneous to the matters mentioned in s. 237(b) of the Companies Act;
(3) that the order having in fact been made

at the instance of the shareholders is invalid and on a true construction of s. 237 this could not be done;

(4) that the order was invalid because it was made by the Chairman of the Board and not by the Board; and

(5) that the provisions of S. 237(b) are void as offending Arts. 14 and 19(1) (g) of the Constitution.

The allegations of mala fides were denied on behalf of the respondents. They disputed the validity of all the other grounds raised by the petitioners. The High Court rejected the contentions urged before it on behalf of the appellants and dismissed the writ petition. The appellants thereafter sought to obtain a certificate of fitness for appeal to this Court; but the High Court refused to grant such a certificate. They have now come up to this Court by special leave.

In order to appreciate the arguments addressed before us a brief statement of the relevant facts would be necessary. The Company was registered in the year 1961 and had an authorised capital of Rs. 1 crore divided into 1,00,000 shares of Rs. 100 each. Its primary object was to carry on business of manufacturing all types of barium compounds. Appellant No. 2 was appointed Managing Director of the Company from December 5, 1961 and his appointment and remuneration were approved by the Central Government on July 30, 1962. The erection of the plant was undertaken by M/s. L. A. Mitchell Ltd., of Manchester in pursuance of a collaboration agreement between it and the company entered in October, 1961 and approved by the Central Government in November of that year. Thereafter a permit for importing the requisite machinery was granted to the Company. The issued capital of the Company was Rs. 50, 00,000 and the public was invited to subscribe for shares in the Company. It is said that the issue was oversubscribed by March 12, 1962.

319

It would see that soon after the collaboration agreement was entered into M/s. L. A. Mitchell Ltd., was taken over by a financial group (M/s. Pearwn, & Co. Ltd.), to which a. person named Lord Poole belonged. It would appear that as the work of setting up of the plant was being delayed the Company sent a notice- to M/s Mitchell Ltd.., on April 2, 1965 in which the Company stated that if the plant was not completely installed and got into running order by June 1, 1965 the Company will have to make alternative arrangements and that it would hold M/s. L. A. Mitchell Ltd., liable to pay damages to the Company for the loss suffered by it. As a result of the notice Lord Poole visited India in April/May, 1965. In his opinion the design of the plant was defective. Certain negotiations took place between the Company and Lord Poole in the course of which an undertaking was given by Lord Poole on at behalf of the collaborators that the work would be completed with necessary alterations and modifications in accordance with the report of M/s. Humphrey & Co., and that the collaborators would spend an additional amount upto pound 250,000 as may be required for the purpose. It is said that the plaint was producing at that time only 25 per cent of its installed capacity but that according to the assurance given by Lord Poole it would yield full production by April, 1966.

According to the appellants, before entering into a collaboration agreement with M/s. L. A. Mitchell Ltd., the appellant No. 2 Balasubramanian was negotiating with a

German firm named Kali Chemie A. G. of Hanover for obtaining their collaboration. It is said that the firm of M/s. T. T. Krishnamachari & Sons were and still are the sole agents in India for some of the products of Kali Chemie. The firm of T. T. Krishnamachari & Sons approached appellant No. 2 for the grant of sole selling, agency of the products of the plant to be established in collaboration with Kali Chemie. Appellant No. 2 did not agree to this with the result that the company's negotiations with Kali Chemie broke down. The appellants also say that T. T. Krishnamachari & Sonswere later a so granted a licence to set up a plant for manufacturing barium chemicals but that on appellant No. 2 bringing certainfacts: to the notice of Mr. Nehru the licence in favour of T. T. Krishnamachari & Sons was revoked. The relevance of these facts is in connection with the plea of mala fides. On this part of the case the appellant's contention is that the Chairman of the Company Law Board Mr. R. C. Dutt made the order for investigation into the affairs of appellant No. 1 at the instance of Mr. T. T. Krishnamachari, the then Finance Minister and also because of his bias against appellant No. 2. The suggestion is that as the licence of M/s. T. T. Krishnamachari & Sons was revoked and as they were not even given sole selling agency for the sale of the products of barium chemicals Mr. T. T. Krishnaniachari wanted action to be taken under this provision either for penalising appellant No. 1 or putting pressure on it.

320

A lengthy argument was addressed before us by Mr. Setalvad bearing on the question of mala fides in the course of which he referred us to certain documents. He also wanted us to bear in mind the sequence in which certain events occurred and said that these would indicate that the former Finance Minister must have been instrumental in having an order under S. 237(b) made by the Chairman of the Board. We were, however, not impressed by this argument. Our learned brother Shelat has dealt with this aspect of the matter fully in his judgment and as we agree with him it is not necessary to say much on the point. We would, however, like to refer to and deal with one aspect of the argument bearing on the question of mala fides. Mr. Setalvad points out that the Company Law Board had decided in December 1964 to take action against appellant No. I under s. 237(b) and had actually obtained approval of Mr. T. T. Krishnamachari to the proposed action. Therefore, according to him the real order is of Mr. Krishnamachari even though the order is expressed in the name of the Board. We find no substance in the argument. The decision to take action was already taken by the Chairman and there is nothing to indicate that in arriving at that decision he was influenced by the Finance Minister. If the decision arrived at by the Chairman was an independent one it cannot be said to have been rendered mala fide because it was later approved by Mr. Krishnamachari whose sons undoubtedly constitute the partnership firm of M/s. T. T. Krishnamachari & Sons. It is also suggested by Mr. Setalvad that the action approved of in December, 1964 was delayed till May, 1965 because in the interval some negotiations with Kali Chemie had been started and had they ended fruitfully M/s. T.T. Krishnamachari & Sons would have got the sole selling agency of the products of barium chemicals. Now it does seem from ,certain material brought to our notice that negotiations with Kali Chemie were revived by appellant No. 2 because of the difficulties which were being experienced in the working of the collaboration agreement with M/s. L. A. Mitchell Ltd. No material,

however, is placed before us from which it could be reasonably inferred that had the negotiations with Kali Chemie fructified M/s. T. T. Krishnamachari & Sons would have secured the sole monopoly for sale of the products of barium chemicals. One more point was urged in connection with this aspect of the argument and it is that the appellants were not given an opportunity to cross-examine Mr. T. T. Krishnamachari and Mr. Dutt. In our opinion, in a proceedingunder Art. 226 of the Constitution the normal rule is, as pointedout by this Court in The State of Bombay v. Purshottam Jog Naik to decide disputed questions on the basis of affidavits and that it is within the discretion of the High Court whether to allow a person who has sworn an affidavit before it-as indeed Mr. Krishnamachari and Mr. Dutt have-to be cross-examined or not to permit it. In exercise of. its discretion the High Court has re-

321

fused permission to cross-examine them. In such a case it would not be appropriate for this Court while hearing an appeal by special leave to interfere lightly with the exercise of that discretion.

Mr. Setalvad said that as the appellants had made out a prima facie case of mala fides in their affidavits, and as these allegations had been denied by the respondents, the High Court was in error in refusing permission to the appellants to cross-examine the persons who swore the affidavits on the side of the respondents. We are not aware of the rule on which Mr. Setalvad bases himself. There is nothing to show that the High Court thought that a prima facie case of mala fides had been made out. Even in such a case a court might well hold that it has been demolished by the affidavits in answer. The court has to find the facts and if it finds that it can do so without cross-examination it is not compelled to permit cross-examination. We have no reason to think that the High Court could not have ascertained the facts on the affidavits themselves.

Coming to the second point, it would be desirable to reproduce s. 237 which reads thus:

> "Without prejudice to its powers under section 235 the Central Government-
>
> (a) shall 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-
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> (i) the company, by special resolution, or
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> (ii) the Court, by order,

declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government; and

> (b) may do so if, in the opinion of the Central Government, there are circumstances suggesting-
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> (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; or
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> (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 members; or
(iii) that the members of the company have not been given all the information with respect to its
322
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."

In view of the fact that the Central Government, by virtue of the powers conferred by ss. 10-E and 637 delegated its powers under s. 237 to them Company Law Board we shall read S. 237 as if in place of the words "Central Government" there are the words "Company Law Board" or for brevity 'Board'. According to Mr. Setalvad, cl. (b) of s. 237 requires two things: (1) the opinion of the Board and (2) the existence of circumstances suggesting one or more of the matters. specified in sub-cls. (i) to (iii). He contends that though the opinion of the Board is subjective the existence of circumstances set out in the sub-cls. (i) to (iii) is a condition precedent to the formation of the opinion. Therefore, according to him, the Court is entitled to ascertain whether in fact any of those circumstances exists. The Attorney-General disputes this construction and contends that the clause is incapable of a dichotomy and that the subjective process embraces the formation of an opinion that circumstances suggestive of any of the matters comprised in sub-cls. (i) to (iii) exist.

Once it is conceded that the formation of an opinion by the Board is intended to be subjective-and if the provision is constitutional which in our view it is-the question would arise: what is that about which the Board is entitled to form an opinion? The opinion must necessarily concern the existence or non-existence of facts suggesting the things mentioned in the several sub-clauses of cl. (b). An examination of the section would show that cl. (b) thereof confers, a discretion upon the Board to appoint an Inspector to investigate the affairs of a company. The words "in the opinion of" govern the words "there are circumstances suggesting" and not the words "may do so". The words 'circumstances' and 'suggesting' cannot be dissociated without making it impossible for the Board to form an 'opinion' at all. The formation of an opinion must, therefore, be as to whether there are circumstances suggesting the existence of one or more of- the matters in sub-cls. (D to (iii) and not about any-thing else. The opinion must of course not have been arrived at mala fide. To say that the opinion to be formed must be as to the necessity of making an investigation would be making a clear departure from the language in which s. 237(b) is couched. It is only after the, formation of, certain opinion by the Board that the stage for exercising the discretion conferred by the provision is reached. The discretion conferred to order an investigation is administrative and not judicial since

323

its exercise one way or the other does not affect the rights of a company nor does it lead to any serious consequences as, for instance, hampering the business of the company. As has been pointed out by this Court in Raja Narayanalal Bansilal v. Maneck Phiroz Mistry & Anr.(1) the investigation undertaken under this provision is for ascertaining facts and is thus merely exploratory. The scope for judicial

review of the action of the Board must, therefore, be strictly limited. Now, if it can be shown that the 'Board had in fact not formed an opinion its order could be successfully challenged. This is what was said by the Federal Court in Emperor v. Shibnath Banerjee(2) and approved later by the Privy Council. Quite obviously there is a difference between not forming an opinion at all and forming an opinion upon grounds, which, if a court could go into that question at all, could be regarded as inapt or insufficient or irrelevant. It is not disputed that a court can,not go into the question of the aptness or sufficiency of the grounds ,upon which the subjective satisfaction of an authority is based. But, Mr. Setalvad says, since the grounds have in fact been disclosed in the affidavit of Mr. Dutt upon which his subjective satisfaction was based it is open to the court to consider whether those grounds are relevant or are irrelevant because they are extraneous to the question as to the existence or otherwise of any of the matters referred to in sub-cls. (i) to (iii).

Let us now examine the affidavit of Mr. Dutt. Since this affidavit is in answer to the allegations made in the writ petition the two ;should be considered together. In paragraphs 1 to 19 of the writ petition certain facts and figures concerning the formation, registration etc. of the company, the activities of the company and other related matters have been set out. These were admitted by Mr. Dutt in paragraph 14 of the counter-affidavit. Paragraph 20 onwards of the writ petition deals with the action taken by the Board and the various grounds on which according to the appellants the action of the Board is open to challenge. The first 4 paragraphs of the counter-affidavit deal with certain formal matters. In paragraph 5 Mr. Dutt has set out that the petition is liable to be dismissed summarily being grounded on facts which are, false, speculative and lacking in material particulars. Thereafter he has set out what, according to him, are the true facts. In paragraphs 6 to 8 he has dealt with the legal aspects of the case. The 8th paragraph is the most important amongst them. Here Mr. Dutt has stated that it was not competent to the Court to go into the question of adequacy or otherwise of the material on the basis of which orders under s. 237(b) are passed by the Board. Then he stated: 'However, if in spite of what has been stated and contrary to the submissions above, this Han'ble Court still holds that it is necessary for the Court to examine the relevant material in

(1)[1961] I S.C.R. 417.

(2)[1944] F.C.R. 1.

324

order to do justice, then the Board would have no objection to producing the same for the Court's perusal provided it is not shown to the petitioners." It may be mentioned that the Court did not call for this material at all nor did the appellants seek its production. In paragraph 9 Mr. Dutt has categorically stated that the order of May 19, 1965 was passed after careful and independent examination of the material by the Chairman and that it was issued in proper exercise of the powers conferred upon it. He has specifically denied that it was issued at the instance of the second respondent. In paragraph 10 Mr. Dutt has taken the plea that the petition was liable to be dismissed as it had not been made bona fide but for extraneous reasons and to create prejudice with a view to thwart statutory investigation. Then he has set out the circumstances upon which his contention is based. In paragraph 13 he has stated that without prejudice to his submissions in the

earlier paragraphs he would reply to allegations contained in the various paragraphs of the writ petition. Then follows paragraph 14 upon which Mr. Setalvad has founded an argument that the grounds disclosed therein being extraneous the order is invalid. In this paragraph Mr. Dutt has admitted some of the facts stated in paragraphs 1 to 19. He has also said that the Board was aware of the fact that the company had entered into collaboration with M/s. L. A. Mitchell Ltd. He has then added:..... but it has no information of any of the other matters and/or negotiations with M/s. L. A. Mitchell Ltd., Manchester. However, from the Memoranda received by the Board referred to in paragraph 5 and other examination it appeared inter alia that:

(i) that there had been delay, bungling and faulty planning of this project, resulting in double expenditure. for which the 'collaborators had put the responsibility upon the Managing Director, Petitioner No. 2:

(ii) Since its flotation the company has been continuously showing losses and nearly 1/3rd of its share capital has been wiped off;

(iii)that the shares of the company which to start with were at a premium were being quoted on the Stock Exchange at half their face value; and

(iv)some eminent persons who had initially accepted seats on the Board of Directors of the company had subsequently severed their connections with it due to differences with Petitioner No. 2 on account of the manner in which the affairs-of the company were being conducted. "

In paragraph 5 it may be recalled Mr. Dutt has set out the grounds on which the writ petition deserved to be summarily
325
rejected. It will thus be clear that what are characterised by Mr. Setalvad as the grounds upon which the order of the Board is based are nothing more than certain conclusions drawn by the Boar& from some of the material which it had before it. Moreover the expression "inter alia" used by Mr. Dutt would show that the conclusions set out by him specifically are not the only ones which could be drawn from the material referred to by, him in paragraph 5 of his affidavit.

Turning to paragraph 16 of the affidavit we find that Mr. Dutt has clearly reiterated that there was ample material before the Board on which it could and did form the opinion that there were circumstances suggesting that as stated in the order of May, 19, 1965, the business of the company was being conducted with intent to defraud creditors, members and other persons and further that the persons concerned in the management of the affairs of the company had in connection therewith been guilty of fraud, misfeasance and other misconduct towards the company and its members. This paragraph is in answer to paragraph 21 of the writ petition. It is in that paragraph alone that the appellants had specifically raised the contention that the recital in the order as to the existence of material is not correct and that in point of fact there was no material before the Board to form the said opinion. In this state of pleadings it would not be right to construe the affidavit of Mr. Dutt to mean that the only conclusions emerging from the material before the Board are those that are set out in paragraph 14 of his affidavit.

Apart from this we do not think that the conclusions set out

in paragraph 14 are extraneous to the matters indicated in the order of May 19, 1965. What is said therein is that there are circumstances suggesting that the business of the appellants is being conducted with intent to defraud its creditors, members and others, and that. the persons concerned with the management of the affairs of the company have been guilty of fraud, misfeasance and other misconduct towards the company and its members. it has to be borne in mind that what the Board is to be satisfied about is whether the circumstances suggest any of these things and not whether they establish any of these things. Now, the first of its conclusion is to the effect that the materials show that there was delay , bungling, faulty planning of the project and that this resulted in double expenditure for which the collaborators had put the responsibility upon the Managing Director, that is, appellant No. 2. Would it be farfetched to say that these circumstances could reasonably suggest to the Board that these happenings were not just pieces of careless conduct but were deliberate acts or omissions of appellant No. 2 done with the ulterior motive of earning profit for himself ? Similarly could not the fact that the company was continuously showing losses since its flotation and that 1/ 3rd of its
326
share :-capital had ,been wiped out could have been suggestive of fraud to the Board.
In 'this connection, we think it right to point out that the spirit of the section must be kept in mind in determining its interpretation. The section was enacted to prevent the Management of a company from acting in a manner prejudicial to the interests of the shareholders for whom it was difficult,to get together and take steps for the protection of their interests jointly. It was this difculty of the shareholders-which is a reality-which had led to the enactment of the section. There is no doubt that few share-holders have the means or ability to act against the Management. It would furthermore be difficult for the shareholders to find out the facts leading to the poor financial condition of a company. The Government thought it right to take power to step in where there was reason to suspect that the Management may not have been acting in the interests of the shareholders-who would not be able to take the steps against a powerful body like the Managementand to take steps for protection of such interests. As we have said, the section gives the exploratory power only. Its object is to find out the facts., a suspicion having been entertained that all was not well with the company. The powers are exercised for ascertaining facts and, therefore, before they are finally known, all that is necessary for the exercise of the powers is the opinion ,of the Board that there are circumstances which suggest to it that fraud and other kinds of mismanagement mentioned in sub-cls. (i) to (iii) of cl. (b) of the section may have been committed. If the facts do reasonably suggest any of these things to the Board, the power can be exercised,though another. individual might think that :-the ;facts suggest otherwise It cannot be said that from a huge loss incurred by a company and the working of the company in a disorganised and un-businegslike way, the only conclusion possible is that it was due to lack of capability. It is reasonably ,conceivable that the result had been produced by fraud and other varieties of dishonesty or misfeasance. The order does not amount to a finding of fraud. It is to find out what kind of wrong ,action has led to,the company's ill-fate that the powers under the sectional given. The enquiry may

reveal that.the renovation or other similar kind of malfeasance. It would be destroying the beneficial effective use of the powers given by the section to say that the Board must first show that a fraud can clearly be said to have.been committed. It is enough that the facts show that it can be reasonably thought that the company's unfortunate position might have been caused by fraud and other species of dishonest action. In our opinion, therefore, the argument of Mr. Setalvad about the circumstances being extraneous cannot be accepted.

Coming to the third point of Mr. Setalvad pointed out that four ex-Directors of the Company who had resigned submitted a

327

memorandum to Mr. T. T. Krishnamachari while he was holding the office of Finance Minister in which grave allegations were made concerning the affairs of the Company and the management of the Company by the second appellant. The investigation, according to Mr. Setalvad. was the outcome of this memorandum and that by ordering it the Board has in effect enabled the ex-Directors who continue to be shareholders to circumvent the provisions of ss. 235 and 236 of the Companies Act. Section 235 deals with "Investigation of affairs of company on application by members or report by Registrar". Clause (a) of this section provides that in the case of a company having a share capital the investigation can be ordered either on the application of not less than 200 members or of members holding not less than one-tenth of the total voting power therein. We are not concerned with cls. (b) and (c). Apparently the four ex-Directors were not holding 10% of the voting power of the Company. At any rate the case was argued on this footing. Section 236 provides that such application has to be supported by such evidence as the Board (reading 'Board' for 'Central Government') may require. It also empowers the Board to require the applicants to furnish security for such amount, not exceeding one thousand rupees as it may think fit, for the payment of the costs of the investigation. The contention is that though the Board acted upon the memorandum submitted by four ex-Directors it did not even require them to comply with the provisions of s. 236. The contention is that the order of the Board appointing Inspectors is invalid. In other words the argument amounts to this that the provisions of s. 237(b) have been utilised by the Board as a cloak for taking action under the provisions of s. 235. In other words this is an argument that the order was made mala fide. It is true that a memorandum was presented to Mr. Krishna-machari by four ex-Directors containing grave allegations against the two appellants. But it was not solely on the basis of this memorandum that action was taken by the Board. It is clear from the counter-affidavit of Mr. Dutt and particularly from paragraph 5 thereof that the Board had before it not only two sets of memoranda dated May 30, 1964 and July 9, 1964 respectively from four ex-Directors of the Company alleging serious irregularities and illegalities in the conduct of the affairs of the Company but also other materials. The Board points out that over a long period beginning from September 1961 the Department had been receiving various complaints in regard to the conduct of the affairs of the Company. One complaint had also been received by the Special Police Establishment and forwarded by it to the Department in November, 1963. The matter was enquired into by the Regional Director of the Board at Madras and he, in his report, sent to the Board in September 1964 suggested an urgent and comprehensive investigation

into the affairs of the Company. In his
/S5SCI-23
328
affidavit the Chairman of the Board Mr. Dutt has stated further in paragraph 5(b) as follows:-

> "The material on the file was further examined in the light of the Regional Director's recommendation by the two Under Secretaries of the Board (Sarvashri M. K. Banerjee C. S. S. and K. C. Chand, I. R. S. at the head. quarters of the Board in New Delhi and both of them endorsed the recommendation of the Regional Director to order an investigation. The matter was then considered by the Secretary of the Company Law Board in charge of investigation (Shri D. S. Dang, I.A.S.) and he also expressed his agreement that there was need for a deeper probe into the affairs of the company."
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> Then again in paragraph 5(c) he has stated as follows:-
>
> "Accordingly, the matter was put up to me at the end of November 1964 and after consideration of all the material on record, I formed the opinion that there were circumstances suggesting the need for action under section 237(b) of the Companies Act, 1956".

It is abundantly clear from all this that the investigation cannot be said to have been ordered either at the instance of the four ex-Directors or on the sole basis of the memoranda submitted by them. There is, therefore, no contravention of the provisions of SS. 235 and 236 of the Act. As a corollary to this it would follow that the order was not made mala fide or is otherwise invalid.

As already stated the appellant had challenged the provisions of S. 237(b) on the ground that they are violative of the fundamental rights under Arts. 14 and 19(1)(g) of the Constitution. Our brother Shelat has dealt with this attack on the provisions fully and we agree generally with what he has said while dealing with the contentions. We would, however, like to add that the company being an artificial legal person cannot, as held by this Court in The State Trading Corporation of India Ltd., v. Commercial Tax Officer Visakhapatnam & Ors.(1),claim the benefit of the provisions of Art. 19(1)(g) though appellant No. 2 Balasubramanian can do so. We agree with our learned brother that the action proposed under S. 237(b) being merely, exploratory in character the fundamental right of Balasubramanian to carry on business is not affected thereby. Since that is so, the question whether the provisions of the aforesaid section are a reasonable restriction on the exercise of the right under Art. 19(1)(g) does not arise for consideration. In the circumstances, therefore, we do not think that there is anything more that we need say.

The last question is whether it was not competent to Mr. Dutt alone to take the decision that an investigation be ordered against the company. In taking the decision Mr. Dutt acted under a rule
1964] 4 S.C.R. 99.
329
of procedure prescribed in the order dated February 6, 1964. The validity of this rule is challenged, by Mr. Setalvad on the ground that this amounts to sub-delegation of a delegated power and is ultra vires the Act. Clause (a) of

sub-s. (1) of s. 637 read with s. 10(E)(1) empower the Central Government to delegate its powers under s. 237 to the Company Law Board. By notification dated February 1, 1964 the Central Government has delegated, amongst other powers and functions, those conferred upon it by s. 237 upon the Company Law Board. By another notification of the same date the Central Government has made and published rules made by it in exercise of its powers under s. 642(1) read with S. 10E(5) rule 3 of which reads thus:-

> "Distribution of business;-The Chairman may, with the previous approval of the Central Government, by order in writing, distribute the business of the Board, among himself and the other member or members, and specify the cases or classes of cases which shall be considered jointly by the Board."

By order dated February 6, 1964 the Chairman of the Company Law Board specified the cases and classes of cases to be considered jointly by the Board and distributed the remaining business between himself and other members of the Board. Amongst the matters allocated to the Chairman is the appointment of an Inspector under s. 237 to investigate the affairs of a company. This, Mr. Setalvad says" could not be done in the absence of an express provision in the Act. In this connection he has referred us to sub-s. 4A of s. 10E which was subsequently added-but not made retrospective-by an amendment of the Act which confers an express power on the Central Government to enable the Chairman to distribute the powers and functions of the Board. According to the learned Attorney-General this provision was enacted only to make what was implicit in s. 10E(5) read with S. 642(1) clear and that the distribution of the work of the Board being merely a matter of procedure the order of the Chairman allocating the power under s. 237(b) to himself did not amount to sub-delegation of the power of the Board.

Bearing in mind the fact that the power conferred by s. 237(b) is merely administrative it is difficult to appreciate how the allocation of business of the Board relating to the exercise of such power can be anything other than a matter of procedure. Strictly speaking the Chairman to whom the business of the Board is allocated does not become a delegate of the Board at all. He acts in the name of the Board and is no more than its agent But even if he is looked upon as a delegate of the Board and, therefore, a sub-delegate vis-a-vis the Central Government he would be as much subject to the control of the Central Government as the Board itself. For sub-s. (6) of s. 10E provides that the Board shall, in

S5SCI-23(a)

330

the exercise of the powers delegated to it, be subject to the control of the Central Government and the order distributing the business was made with the permission of the Central Government. Bearing in mind that the maxim delegatus non potest delegare sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by an express provision or by necessary impli-cation. Where, as here, what is sub-delegated is an administrative power and control over its exercise is retained by the nominee of Parliament, that is, here the Central Government, the power to make a delegation may be inferred. We are, therefore, of the view that the order made by the Chairman on behalf of the Board is not invalid.

To sum up, then, our conclusions may be stated thus:- The discretion conferred on the Central Government by s. 237(b)

to order an investigation and delegated by it to the Company Law Board is administrative, that it could be validly exercised by the Chairman of the Board by an order made in pursuance of a rule enacted by the Central Government under S. 642(1) read with s. 10E(5), that the exercise of the power does not violate any fundamental right of the company, that the opinion to be formed under S. 237(b) is subjective and that if the grounds are disclosed by the Board the Court can examine them for considering whether they are relevant. In the case before us they appear to be relevant in the context of the matter mentioned in sub-cls. (i) to (iii) of s. 237(b). Though the order could successfully be challenged if it were made mala fide, it has not been shown to have been so made. The attack on the order thus fails and the appeal is dismissed with costs.

Hidayatullah, J. We are concerned in this appeal with the legality of an order of the Chairman, Company Law Board, May 19, 1965, (purporting to be under S. 237(b) of the Companies Act, 1956) declaring that the affairs of the Barium Chemicals Ltd. be investigated. As a consequence Inspectors have been appointed and searches have been made. The Company and its Managing Director filed a petition under Art. 226 of the Constitution in the High Court of Punjab seeking to quash the order and on failure there, have filed this appeal by special leave of this Court. The action of the Chairman was and is challenged on diverse grounds but those which were presented before us were few and clear cut. The action is challenged as without jurisdiction because not the Board but the Chairman alone acted, as mala fide because no honest opinion was formed on the matters which under the section give rise to the power but on irrelevant and extraneous material, and further because the order was passed under the influence and malice of a Minister of Cabinet who was interested in another Company belonging to his sons and sought this means to oust a rival.

The facts have been stated already in some detail by my brother Shelat and I need not take time in restating them. My

331

order proposed by him but as I view the matter a little differently on some of the aspects of the case, I wish to record my reasons briefly.

Under the Companies Act 1956, a power of superintendence over the affairs of Companies is retained by the Central Government in much the same way as the Board of Trade in England exercise over Companies in that country. This power is of two kinds (a) calling for information or explanation from the Company and (b) ordering an investigation into the affairs of the Company by appointment of Inspectors for inspection, investigation and report. The power is not only varied but is capable of being exercised variously. The power to call for information is conferred on the Regisrar in two different ways. Firstly, jurisdiction is conferred on the Registrar by s. 234 to call for information or explanation in relation to any document submitted to him, which information or explanation must be furnished on pain of penalties. If the information or explanation is not furnished or is unsatisfactory the Registrar can report to the Central Government for action. Secondly, if a contributory, creditor 'or other person interested places materials before the Registrar (a) that the business of the Company is being carried on in fraud of its creditors or of persons dealing with the Company or (b) otherwise for a fraudulent or unlawful purpose, the Registrar can, after hearing the Company, call upon it to furnish any information

or explanation. A further power is conferred after December 28, 1960, on the Registrar, who may, after being authorised by a Presidency Magistrate or a Magistrate First Class, enter any place, search and seize any document relating to the Company, its managing agents, or Secretaries and treasurers or managing director or manager, if be has reason to believe that it may be destroyed or tampered with.

Sections 235-251 provide for investigation of the affairs of a company and for sundry matters related to such investigations. They follow the scheme of ss. 164-175 of the English Act of 1948. Section 235 enables the Central Government to appoint inspectors for investigation and report generally if the Registrar reports under s. 234 and also if a stated number of shareholders or shareholders possessing a stated voting power apply. When' members apply they must support their application by evidence and give security for costs of investigation. In the present case no action under any of the sections noted so far was taken but it was taken under s. 237. This section is in two parts. The first part which is (a) compels the Central Government to appoint inspectors to investigate and report if the company by a special resolution or the court by order declares that the affairs be investigated. The second part which is (b) gives a discretionary power, As this dis-

332

cretionary power was in fact exercised this is a convenient place to read part (b) of s. 237. It reads:-

> "237. Without prejudice to its powers under section 235, the Central Government-
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> (a)
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> (b) may do so (i.e. appoint one or more competent persons as inspectors to investigate etc.) 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 members; 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.

By s. 237(b) the power is conferred on the Central Government but under the Companies (Amendment) Act, 1963 a Board of Company Law,, Administration consisting of a Chairman and a member has been set up. This Board is constituted under s. 10E which has been introduced in the parent Act. The section may be read here:-

> "10E. Constitution of Board of Company Law Administration.
>
> (1) As soon as may be after the commencement

of the Companies (Amendment) Act, 1963, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Admin
istration
to exercise and discharge such powers and functions conferred on the Central Government by or under this Act or any other law as may be delegated to it by that Government.
333
(2) The Company Law Board shall consist of such number of members, not exceeding five, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette.
(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.
(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.
(5) The procedure of the Company Law Board shall be such as may be prescribed.
(6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government.

The Board was constituted on February 1, 1964 by a notification and by a notification of even, date in exercise of the powers conferred by cl. (a) of sub-s. (1) of s. 637 read with sub-s. (1) of s. 10E of the Companies Act, the Central Government delegated its powers and functions to the Board under s. 237(b) among others. Simultaneously acting in exercise of the powers conferred by sub-s. (1) of s. 642 read with sub-s. (5) of s. 10E the Central Government made the Company Law Board (Procedure) Rules, 1964 and one such rule dealt with distribution of business to the following effect:-

"3. Distribution of business-The Chairman may, with the previous approval of the Central Government, by order in writing, distribute the business of the Board among himself and the other member or members, and specify the cases or classes of cases which shall be considered jointly by the Board."

The Chairman by an order dated February 6, 1964 specified the cases or classes of cases which are to be considered jointly by the Board and distributed the remaining business of the Board between the Chairman and the member each acting individually. The power under s. 237 was placed among the powers exercisable by the Chairman singly. That is how action was taken in the name of the Board but by the Chairman and is the subject of challenge for the reason that a power delegated to the Board as a whole cannot be delegated to an individual member in the absence of a provision such as sub-s. (4A) added recently to s. 10E enabling the solidarity of the Board to be broken. Sub-section (4A) of s. 10E, which has been added by an amending Act of 1965, after the events in this case, reads:-

"10E. (4A). The Board. with the previous approval of the Central Government, may, by order in writing,
334

> authorise the chairman or any of its other members or its principal officer (whether known as secretary or by any other name) to exercise and discharge, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions as it may think fit; and every order made or act done in the exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board."

This sub-section enables the work of the Board to be distributed among members while sub-s. (5) merely enables the procedure of the Board to be regulated. These are two very different things. One provides for distribution of work in such a way that each constituent part of the Board properly authorised, becomes the Board. The other provides for the procedure of the Board. What is the Board, is not a question which admits of solution by procedural rules but by the enactment of a substantive provision allowing for a different delegation. Such an enactment has been framed in relation to the Tribunal constituted under s. 10B and has now been framed under s. 10E also. The new sub-section involves a delegation of the powers of the Central Government to a member of the Board which the Act previously allowed to be made to the Board only. The statute, as it was formerly, gave no authority to delegate it differently or to another person or persons. When it spoke of procedure in sub-section (5) it spoke of the procedure of the Board as constituted. The lacuna in the Act must have been felt, otherwise there was no need to enact sub-section (4A). The argument of the learned Attorney-General that sub-s. (4A) was ?lot needed at all, does not appeal to me. It is quite clear that its absence would give rise to the argument accepted by me, which argument is unanswerable in the absence of a provision such as the new sub-section. My brother Shelat has dealt with this aspect of the case fully and I cannot add anything useful to what he has said. I agree with him entirely on this point.

I shall now consider the question of mala fides. This arises in two different ways. There is first mala fides attributed to the chairman because he is said to have acted under the behest of a Minister of Cabinet interested in another rival Company. It is not necessary to go into it. The Chairman obtained the opinion of quite a few of his assistants (perhaps more than was altogether necessary) and this fact is stated to establish his fairness to and honest dealing with the Company. There is nothing to show that this was done on purpose to cover up a conspiracy to do harm to the Company. On the other hand I cannot overlook the fact that the rival Company itself had obtained a licence to manufacture Barium Chemicals which it allowed to lapse. This shows that rivalry between two manufacturing concerns was not the prime

335

motive. No doubt the rival Company had tried to obtain the sole selling rights of, and even a share in, this Company. This might have weighed with me but for the fact that the Company itself had done nothing even before action was taken, to establish itself. The whole project had hung fire and capital was eaten into a rapid rate because there were technical defects in the setting up of the plant and machinery. There was not much hope of profits as a sole selling agent or even as a partner. In these circumstances, I cannot go by the allegations made against the Chairman of

the Board personally or those made against the Minister, and I find no evidence to hold that dishonesty on the part of the one or malice on the part of the other lies at the root of this action.

This brings me to the third and the last question, namely, whether mala fides or the ultra vires nature of the action has been established in this case to merit interference at our hands. In view of my decision on the question of delegation it is hardly necessary to decide this question but since contradictory opinions have been expressed on it by my brethren Mudholkar and Shelat. I must give my views on this matter. The question naturally divides itself into two parts. The first is whether there was any personal bias, oblique motive or ulterior purpose in the act of the chairman. The second is what are the powers of the Board in this behalf and whether they have been exercised contrary to the requirements of the Act. The first ground has already been dealt with in part when I considered the malice and influence of the Minister. It may be said at once, that apart from that allegation, nothing has been said attributing to the Chairman any personal bias, grudge, oblique motive or ulterior purpose. Even in the arguments it was not suggested that the Chairman acted from improper motives. Therefore, all that I have to consider is whether the action of the Chairman can be challenged as done either contrary to the provisions empowering him or beyond those provisions.

In dealing with this problem the first point to notice is that the power is discretionary and its exercise depends upon the honest formation of an opinion that an investigation is necessary. The words "in the opinion of the Central Government" indicate that the opinion must be formed by the Central Government and it is of course implicit that the opinion must be an honest opinion. The next requirement is that "there are circumstances suggesting etc." These words indicate that before the Central Government forms its opinion it must have before it circumstances suggesting certain inferences. These inferences are of many kinds and it will be useful to make a mention of them here in a tabular form:-

(a) that the business is being conducted with intent to defraud-
(i) creditors of the company, or (ii) members,
336
or (iii) any other person;
(b) that the business is being conducted-
(i) for a fraudulent purpose or (ii) for an unlawful purpose;
(c) that persons who formed the company or manage its affairs have been guilty of-
(i) fraud
or (ii) misfeasance or other misconduct-- to wards the company or towards any of its members.
(d) That information has been withheld from the members about its affairs which might reasonably be expected including calculation of commission payable to-
(i) managing or other director,
(ii) managing agent,
(iii) the secretaries and treasurers,
(iv) the managers.

These grounds limit the jurisdiction of the Central Govern- ment. No jurisdiction, outside the section which empowers

the initiation of investigation, can be exercised. An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedition to find evidence. No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstance leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly:-

> "It is not reasonable to say that the clause permitted the government to say that it has formed the opinion on circumstances which it thinks exist.....

Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances. if questioned, has to be proved at least prima facie. It is not sufficient to assert that the 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 or the withholding of information of a particular kind. We have to see whether the Chairman in his affidavit has shown the existence of circumstances leading to such tentative

337

conclusions. If he has, his action cannot be questioned because the in reference is to be drawn subjectively and even if this Court would not have drawn a similar inference that fact would be irrelevant. But if the circumstances pointed out are such that no inference of the kind stated in s. 237(b) can at all be drawn the action would be ultra vires the Act and void.

Now the Chairman in his affidavit referred to two memoranda dated May 30, 1964 and July 4, 1964 presented by certain ex-directors and also stated that from September 1961 complaints were being received in regard to the conduct of the affairs of the Company, and one such complaint was received from Special Police Establishment in November 1963. The nature of the complaints was not disclosed but in reference to the memoranda it was stated that "irregularities" and "illegalities" in the conduct of the affairs of the Company was alleged therein. It was also stated that the memoranda "were supported by documentary evidence and details of the impugned transactions and the signatories offered to produce witnesses with knowledge of these transactions". This was followed by an enquiry by the Regional Director of the Board at Madras (Shri R. S. Ramamurthi, I.A.S.) who made a report in September 1964. The report was next considered by two Under Secretaries arid by the Secretary of the Company Law board who all agreed "that there was need for a deeper probe into the affairs of the Company". The matter was then placed before the Chairman who formed the opinion that there were circum-stances suggesting the need for action under s. 237(b). None of the reports was produced. Nor was there any indication in the affidavit what their drift was. There was considerable delay in taking up the matter and this was explained as occasioned by the language riots, and other more pressing occupation. It appears that in the High Court

an offer was made to place the reports etc. in the hands of the Court provided they were not shown to the other side, but no such offer was made in this Court. The High Court did not look into the documents.

Had the matter rested there it would have been a question whether this Court should interfere with a subjective opinion, when the affidavit showed that there were materials for consideration. It would then have been a question whether this Court could or should go behind the affidavit. I leave that question to be decided in another case where it arises. In this case it is not necessary to decide it because the affidavit goes on to state:-

> "..... However from the Memoranda received by the Board referred to in paragraph 5 and other examination it appeared inter alia that:-
> (i) there had been delay, bungling and faulty planning of this project, resulting in double expenditure, for which the collaborators had put the responsibility upon the Managing Director, Petitioner No. 2,
> 338
> (ii) Since its floatation the company has been continuously showing losses and nearly 1/3rd of its share capital has been wiped off;
> (iii) that the shares of the company which to start with were at a premium were being quoted
> on the Stock Exchange at half their fa
> ce value;
> and
> (iv) some eminent persons who had initially accepted seats on the Board of directors of the company had subsequently severed their connections with it due to differences with Petitioner No. 2 on account of the manner in which the affairs of the company were being conducted."
> Paragraph 14 of the affidavit).

It may be mentioned that in paragraph 16 of the affidavit the Chairman also stated:-

> "With reference to paragraph 21 of the petition, I have already stated above that there was ample material before the Board on which it could and did form the opinion that there were circumstances suggesting that the business of the company was being conducted with intent to defraud its creditors, members and other persons and further that the persons concerned in the management of the affairs of the company had in connection therewith been guilty of fraud, misfeasance and other misconduct towards the company and its members."

The question thus arises what has the Chairman placed before the Court to indicate that his action was within the four corners of his own powers? Here it must be noticed that members are ordinarily expected to take recourse to the Registrar because there they have to be in a certain number or command a certain proportion of the voting power. They are also required to give evidence and the Company gets an opportunity to explain its actions. If s. 237(b) is used by members, as an alternative to s. 236, the evidence must unerringly point to the grounds on which alone action can be founded. In my opinion there is nothing to show that the, reports which were being received from September 1961, or

the report of the Special Police Establishment indicated fraud. illegality or action or actions with intent to defraud, as contemplated by the section. The affidavit merely says that these reports indicated the need for a deeper probe. This is not sufficient. The material must suggest certain inferences and not the need for "a deeper probe". The former is a definite conclusion the latter a mere fishing expedition. A straight-forward affidavit that there were circumstances suggesting any of these inferences was at least necessary. There is no such affidavit and the reason is that the Chairman completely misunderstood his own powers. This is indicated by the enumeration of the four circumstances, I have extracted from his affidavit and I proceed to analyse them.

339

The first circumstance is "delay, bungling and faulty planning" resulting in "double expenditure" for which the collaborators had put the responsibility on the second appellant. None of these shows an intent to defraud by which phrase is meant something to induce another to act to his disadvantage. The circumstances mentioned show mismanagement and inefficiency which is not the same thing as fraud or misconduct. The second and the third circumstance merely establish that there was loss in making this project work and that a part of capital had been lost. This was admitted by the appellants who pointed out that after considerable negotiations they induced Lord Poole, the President of the collaborating firm, to invest a further sum of pound 25,000. This shows that the appellants were in a position to dictate to the collaborating company which they would not have been able to do if they were guilty of fraudulent conduct. The last circumstance does not also bear upon the subject of fraud and acts done with intend to defraud. that some directors have resigned does not establish fraud or misconduct. There may be other reasons for the resignation.

In the other part of the affidavit the Chairman has merely repeated s. 237(b) but has not stated how he came to the conclusion and on what material. In other words, he has not disclosed anything from which it can be said that the inference which he has drawn that the Company was being conducted with intent to defraud its creditors, members and other persons or persons concerned in the management of the affairs of the Company were guilty of fraud, misfeasance and misconduct towards the company and its members was based on circumstances present before him. In fact, paragraph 16 is no more than a mechanical repetition of the words of the section.

Coming now to the affidavit of Mr. Dang I find that he merely repeats what was stated in the affidavit of the Chairman. He also said that he had seen the papers and agreed with his two Under Secretaries and the Regional Director that a "deeper probe" was necessary’ There is no hint even in this affidavit that the circumstances were such as to suggest fraud, intent to defraud or misconduct, this is to say, circumstances under which investigation can be ordered. The other affidavits also run the same way and it is not, therefore, necessary to refer to them. We are concerned really with the affidavits of the Chairman and Mr. Dang in relation to the exercise of the power conferred by s. 237(b). Neither proves the existence of circumstances under which the power could be exercised. In my opinion, therefore, the action has not been proved to be justified. No doubt, the section confers a discretion but it sets its own limits upon the discretion by stating clearly what must

be looked for in the shape of evidence before the drastic act of investigation into the affairs of a company can be taken. The affidavits which were filed in answer to the petition do not disclose
340
even the prima facie existence of these circumstances. On the other hand, they emphasise only that there was mismanagement and losses which necessitated a "deeper probe". In other words, the act of the Chairman was in the nature of, a fishing expedition and not after satisfaction that the affairs of the Company were being carried on even prima facie with the intent to defraud or that the persons incharge were guilty of fraud or other misconduct. As to the constitutionality of s. 237(b) I agree with my brethren Bachawat and Shelat and have nothing to add. 1, therefore. agree with my brother Shelat that the appeal must be allowed. There will be no order about costs.

Bachawat, J. The order dated May 19, 1965 was passed by the Chairman of the Company Law Board Mr. Setalvad submitted that only the Board could pass an order under s. 237, the Central Government could delegate its function under s. 237 to the Board but it had no power to authorise the Chairman to sub-delegate this function to himself and consequently, the Company Law Board (Procedure) Rules, 1964 made by the Central Government on February 1, 1964 and the Chairman's order of distribution of business dated February 6, 1964 delegating the function of the Board under s. 237 to the Chairman are ultra vires the Companies Act and the impugned order is invalid. The learned Attorney-General disputed these submissions.

As a general rule, whatever a person has power to do himself, he may do by means of an agent. This broad rule is limited by the operation of the principle that a delegated authority cannot be redelegate, delegates non protest delegate. The naming of I delegate to, do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him, and there is a presumption that he is required to do the act himself and cannot redelegate his authority. As a general rule, "if the, statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those name is impliedly prohibited." See Crawford on statutory Construction, 1940 Edn., art. 195, p. 335:- Normally, a discretion entrusted by Parliament to an administrative organ must be exercised by. that organ itself. If a statute entrusts an administrative function involving the exercise of a discretion to a Board consisting of two or more persons it is to be presumed that each member of the Board should exercise his individual judgment on the matter and all, the members of the Board should act together and arrive at a joint decision. Prima facie, the Board must act as a whole and cannot delegate its function to one of its members.

The learned Attorney-General submitted that a distribution of business among the members of the Company Law Board is not a delegation of its authority, and the maxim has no application in
341
such a case. I cannot accept this submission. In Cook v. Ward(1), the Court held that where a drainage board constituted by an Act of Parliament was authorised by it to delegate its powers to a committee, the powers so delegated to the committee must be exercised by them acting in concert and it was not competent to them to apportion those powers

amongst themselves and one of them acting, alone, pursuant to such apportionment, could not justify his acts under the statute. Lord Coleridge, C. J. said at p. 262:- "It was not competent to them to delegate powers, which required the united action of the three, to be exercised according to the unaided judgment of one of them." Again, in Vine v. National Dock Labour Board(1), the House of Lords, held that a local board set up, under the scheme embodied in the schedule to the Dock Workers (Regulation of Employment) Order, 1947 had no power to assign its disciplinary function under cls. 15(4) and 16(2) of the scheme to a committee and the purported dismissal of a worker by the committee was a nullity. In my opinion, the distribution of the business of the Board among its members is a delegation of its authority.

But the maxim "delegatus non potest delegare" must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute, on any authority is intended to be exercised by that authority, and. by no other. But the intention may be negatived by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.

Under ss. 10E(1) and 637(1)(a), the Central Government has power to constitute a Company, Law Board and to delegate its functions to the Board. The Board can consist of such number of persons not exceeding five as the Government thinks fit. One of the members of the Board has to be appointed a Chairman and this necessarily implies that the Board shall consist of at least two members. As a matter of fact, the Government constituted a Board consisting of two members and appointed one of them as Chairman. To this Board the Government delegated its function under s. 237. Section 637 shows that the function under s. 237 can be delegated to the Board and to no other authority. The function under s. 237(b) involves the exercise of a discretion. Prima facie, all the members of the Board acting together were required to discharge this function and they could not delegate their duty to the Chairman. However, under ss. 10E(5) and 642(1), the Central Government may frame rules regulating the procedure of the Board and generally to carry out the purposes of the Act. In the context of s. 10E, I am inclined to construe this rule-making power liberally The Central Government has power to constitute the Company Law Board, to delegate its functions to the Board and to control

(1) [1877] L.R. 2 C.P.D. 255.

(2) [1957] A.C. 488.

342

the Board in the exercise of its delegated functions. In this background, by conferring on the Central Government the additional power of framing rules regulating the procedure of the Board and generally to carry out the purposes of s. 10E, the Parliament must have intended that the internal Organisation of the Board and the mode and manner of transacting its business should be regulated entirely by rules framed by the Government. The Government had, therefore, power to frame the Company Law Board (Procedure) Rules, 1964 authorising the Chairman to distribute the business of the Board. In the exercise of the power conferred by this rule, the Chairman assigned the business under s. 237 to himself. The Chairman alone could, therefore, pass the impugned order. Act No. 31 of 1965 has

now inserted sub-s. (4A) in s. 10E authorising the Board to delegate its powers and functions to its Chairman or other members or principal officer. The power under sub-s. (4A) may be exercised by the Board independently of any rules framed by the Central Government. We find, however, that the Central Government had under ss. 10E(5) and 642(1) ample power to frame rules authorising the Chairman to distribute the business of the Board. The wide ambit of this rule-making power is not cut down by the subsequent insertion of sub-s. (4A) in s. 10E.

Sections 235, 237(a) and 237(b) enable the Central Government to make an order appointing an inspector to investigate the affairs of a company in different sets of circumstances, and the contention that s. 237(b) is discriminatory and is violative of Art. 14 must fail. I also think that s. 237(b) is not violative of Arts. 19(1)(f) and 19(1)(g) of the Constitution. The company is not a citizen and has no fundamental right under Art. 19. Appellant No. 2 who is the managing director of the company is not a citizen, but even assuming that s. 237(b) imposes restrictions on his right of property or his right to carry on his occupation as managing director, those restrictions are reasonable and are imposed in the interests of the general public.

On the question of mala fides, I am inclined to think that the Chairman passed the order dated May 19, 1965 independently of and without any pressure from the Minister. I am all the more persuaded to come to this conclusion having regard to the fact that in paragraph 14 of his affidavit the Chairman has disclosed the circumstances which he took into account in passing the order. In paragraphs 5, 8 and 16 of his affidavit, the Chairman stated that he had various materials on the basis of which he passed the order. But, on reading this affidavit as a whole and the affidavit of Mr. Dang, I am satisfied that in paragraph 14 of his affidavit the Chairman has set out all the material circumstances which bad emerged on an examination of the various materials before him. Briefly put, those circumstances are delay, bungling and faulty planning by the management resulting in double expenditure, huge losses, sharp fall in the price of the Company's shares and the resignation of some of the directors on account of differences in opinion with

343

the managing director. I think that these circumstances, without more, cannot reasonably suggest that the business of the company was being conducted to defraud the creditors, members and other persons or that the management was guilty of fraud towards the company and its members. No reasonable person who had given proper consideration to these circumstances could have formed the opinion that they suggested any fraud as mentioned in the order dated May 19, 1965. Had the Chairman applied his mind to the relevant facts, he could not have formed this opinion. I am, therefore, inclined to think that he formed the opinion without applying his mind to the facts. An opinion so formed by him is in excess of his powers and cannot support an order under s. 237(b). The appeal is allowed, and the impugned order is set aside. I concur in the order which Shelat, J. proposes to pass.

Shelat J. The appellant company is a public limited company registered on July 28, 1961 having its registered office at Ramavaram in Andhra Pradesh and the second appellant was at all material times and is still its managing director.

On August 25, 1959 and September 23, 1960 appellant No. 2 obtained two licences for the manufacture of 2500 and 1900

tonnes of barium chemicals per year in the name of Transworld Traders of which lie was the proprietor. He then started negotiations with Kali Cliemle of Hannover, West Germany to collaborate with him in setting up a plant. While he was so negotiating, M/s., ,T. T. Krishnamachari & Co., who were the sole selling agents of the said German Company, approached the 2nd appellant for the sole selling agency of barium products of the plant proposed to be put up by the 2nd appellant. The 2nd appellant did not agree. On December 5, 1960 M/s. T. T. K. & Co., applied for a licence for manufacture of barium chemicals. On December 23, 1960 the 2nd appellant wrote a letter to the Minister of Commerce and Industry objecting to the grant of a licence to M/s. T. T. K. & Co. Both were considered by the Licensing Committee. The Committee rejected the application of M/s. T. T. K. & Co., but advised them to apply again after six months. On a representation by M / s. T. T. K. &.Co., the Committee reconsidered the matter and recommended the grant of licence to M/s. T. T. K. Chemicals Private Limited. The second appellant once more protested, this time to the Prime Minister but that was rejected.

On July 28, 1961. an agreement between the appellant company and L.A. Mitchell Ltd., of Manchester was signed where under the latter agreed to put up the plant on the appellant company agreeing to pay them pound 184,500. On November 27, 1961, the Government granted a licence to the company for the import of machinery., In the mean time, respondent No. 2 was appointed a, Minister without portfolio and rejoined the Cabinet which lie had left' earlier owing to certain circumstances which are not relevant for the present. From January, 1962 to March, 1963, he continued as a

L/S5SCI-24

344

Minister without portfolio but from March, 1963 to September, 1963, he became the Minister for Defence and Economic Co-ordination and thereafter the Finance Minister. On August 30, 1962, the licence granted to M / S. T. T. K. Chemicals Ltd. was revoked as the company had decided to surrender it.

It would seem that the appellant company was not faring as well as was hoped and though it had been incorporated as early as July, 1961 production had not commenced. There arose also disputes among its directors. On May 30, 1964 and July 9, 1964 four of its directors submitted two memoranda alleging irregularities and even illegalities in the conduct of the company's affairs to the Company Law Board. According to the second appellant, the four directors were disgruntled directors, hostile to him and the Company. The company was not able to start work in full capacity not because of any irregularities but because of the faulty planning and designing by the collaborators. The company realised this fact only in June, 1964 when it received a survey report after the breakdown of the plant during that month from M/s. Humphreys and Glascow (Overseas) Ltd., Bombay. In September, 1964, a meeting was affanged in London between the company's representatives and the representatives of L.A. Mitchell Ltd., of which Lord Poole was the Chairman. It was agreed that L. A. Mitchell Ltd., should depute M/s. Humphreys and Glascow Ltd., London,to go through the designs etc., and to make a report showing the causes of the repeated failures of the plant and suggesting remedies there for. Lord Poole also agreed that the factory would be commissioned without any further delay and that L.A. Mitchell Ltd., would carry out the necessary repairs at their cost. While these negotiations were going

on, representatives of M/s. Kali Chemie of Hannover arrived in India to negotiate a collaboration agreement with the company. On April 4, 1965, a meeting of the company's directors was held in New Delhi which was attended by one Kriegstein, a representative of Kali Chemie and also by the General Manager of M/s. T. T. K. & Co. Certain proposals were discussed and it was decided that the company should give notice to L. A. Mitchell Ltd. canceling the agreement with them. Accordingly, by a notice dated April 2. 1965 the agreement with the said L. A. Mitchell Ltd., was cancelled. On May 7, 1965 representatives of the appellant company and of Kali Chemie met at Stuttgart when proposals for an agreement were discussed. One of these proposals was that the company should be reorganised and its share capital should be distributed in the following proportions:- 49 per cent to the appellant company, 26 per cent to Kali Chemie and 25 per cent to M/s. T. T. K. & Co. It was also proposed that Kali Chemie should take over the responsibility on the production side, the appellant company would be responsible for the management and M/s. T.T.K. & Co. should take over sales promotion. Before however these negotiations could take concrete shape, Lord Poole came over to India. A meeting was held on May 10, 1965 between him and the directors of the

345

appellant company. Lord Poole agreed that the British company would put in pound 250,000 in addition to the amount already invested by it and that production would commence from June, 1965. On May It 1965 another meeting took place when it was decided that without prejudice to what was stated in the notice of April 4, 1965, the appellant company should withdraw para 9 thereof whereby the agreement between them was terminated. By May 11, 1965, the position therefore was that the collaboration agreement between the company and L. A. Mitchell Ltd. was agreed to be continued and consequently the negotiations with the German company and M/s. T. T. K. & Co., were not to proceed further.

On May 19 1965 the first respondent passed the impugned order which inter alia stated:-

> "In the opinion of the Company Law Board there are circumstances suggesting that the business of M/s Barium Chemicals Ltd is being conducted with intent to defraud its creditors, members and other persons; and further that the persons concerned in the management of the affairs of the company have in connection therewith been guilty of fraud, misfeasance and other misconduct towards the company and its members.
>
> Therefore, in exercise of the powers vested by clause (b) of section 237 of the Companies Act 1.956 (Act, 1 of 1956, read with the Government of India, Department of Revenue Notification No. GSR 178 dated the 1st February 1964, the Company Law Board hereby appoint ..... as Inspectors to investigate the affairs of the company since its incorporation in 1961....."

On May 25, 1965 search warrants were obtained by respondents 3 to 10 and accordingly search was carried out at the office of the company at Ramavaram and at the residence of the second appellant and several documents and files were seized. On May 28, 1965, the second appellant submitted a representation to the chairman of the first respondent

Board. He explained that out of the company's paid up capital of Rs. 50 lacs, shares of the value of about Rs. 47 lacs were owned by members of the public, that the company was the first of its kind in India, that it could not go into production soon because of the defective planning by the collaborators, that as a result of recent negotiations, the collaborators had agreed to invest pound 2,50,000 more and that the company's factory had now commenced production from April 1964, that the Board appeaired to have acted on the complaints filed by the said four directors who resented the second appellant's refusal to purchase their holdings at a price above par demanded by them; that though those complaints were lodged some two years ago and were not acted

upon, they were sought now to be made the basis of the impugned order on account of trade rivalry between the company and M/s. T. T. K. & Co., that the order was mala