diction of the Civil Court in this matter. The decision of the Court below, though slightly on a different ground, must be upheld.

In the result this petition is dismissed. There will, however, be no order as to costs. The parties have been directed to appear in the trial Court on 15th of March, 1965 to get further date. The records will be despatched to the Court below immediately.

B.R.T.

LETTERS PATENT APPEAL

Before D. K. Mahajan and S. K. Kapur, JJ.

G. P. GOVIL,—*Appellant.*

versus

UNION OF INDIA,—*Respondent.*

Letters Patent Appeal No. 83-D of 1964.

1965

February, 17th.

Constitution of India (1950)—*Art.* 226—*High Court—When can review findings of Inquiry Officer—Inquiry officer—Whether can base his report on guess work—Exhibited document—Whether can be cancelled.*

Held, that in a petition under Article 226 of the Constitution of India to quash the order of dismissal on the ground that the enquiry suffered from serious infirmities, it is open to the High Court to consider and hold unlawful and set aside any agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, limitations, or short of statutory right; (4) without observance of procedure required by law; (5) violative of principles of natural justice; and (6) unsupported by any evidence.

Held, that it is not legitimate for an inquiry Officer or any quasi-judicial body to go into all types of guess work as to what could and must have happened, particularly when the material could have been available which could have served as positive evidence in coming to the conclusion one way or the other. The enquiry is in a way of a quasi-criminal nature and it is for the prosecution to produce evidence which establishes the guilty of the person charged.

Held, that the Inquiry Officer cannot cancel an exhibited document. A document which has been brought on record cannot be ruled

out of consideration if it has a bearing on the points in issue. The Inquiry Officer, performing quasi-judicial duties, is bound to consider materials on the record and come to a fair finding.

Appeal under Clause 10 *of the Letters Patent against the Order dated the* 25*th March,* 1964, *of the Hon'ble Mr. Justice A. N. Grover, passed in C. W. No.* 264-*D of* 1961.

S. N. ANDLEY, RAMESHWAR NATH AND M. N. ANDLEY, ADVOCATES, for the Appellant.

P. NARAIN, AND W. N. GUJRAL, ADVOCATES, for the Respondent.

ORDER

Kapur, J. KAPUR, J.—The facts of the case leading to the present dispute require a somewhat elaborate statement, particularly in view of the fact that one of the principal contentions urged at the bar and which we are called upon to answer is whether or not the report of the Inquiry Officer is based on any evidence.

The appellant joined service in Government of India in November, 1940 and was promoted as Executive Engineer in September, 1947. From May 1, 1950 to July 24, 1953, he was posted as Executive Engineer, Delhi State, Division No. 1, a Division under the jurisdiction of the Chief Commissioner. On July 24, 1953, he took leave for 3½ months and thereafter joined as Executive Engineer, Simla, Central Division from where he was again transferred in 1955 to Verinag in Kashmir. In December; 1952 a decision was taken by the Ministry of Transport to widen a portion of Delhi-Gurgaon Road (National Highway No. 8) a road leading to the Palam Airport. Accordingly an estimate was prepared by the Roads Organization of the Ministry of Transport. Item 11 in the Bill of Quantities attached to the said estimate was as under:—

> "3/4 premix light chipping carpet with cold bitumen using 6 lbs. of bitumen per cft. of grit and track coat of 20 lbs. of bitumen per hundred cft. of road surface—quantity 3,48,489 sft.—rate Rs. 21-8-0 per hundrad sft. amount Rs. 74,923."

The Ministry gave its technical and financial approval on December 4, 1952, and sent the estimate to the Chief Commissioner, Delhi. Since the work was of urgent nature,

the appellant personally obtained the estimate of the Ministry of Transport from the Secretary of the Local Self Government Department of the Chief Commissioner's Office. On December 17, 1952, the appellant forwarded the estimate to the Superintending Engineer for technical sanction by the Chief Engineer. A draft notice in duplicate inviting tenders was also submitted for the approval of the Superintending Engineer and return to the appellant after approval. The draft notice inviting tenders was checked in the Office of the Superintending Engineer by the Senior Draftsman and the Assistant Quantity Surveyor and some corrections in pencil were made in the draft. It has been found by the Inquiry Officer that the draft of N.I.T. bears initials in the bottom lefthand corner dated the December 20, 1952, which go to show that it was checked as stated above. It has also been found by the Inquiry Officer that both the copies of the notice inviting tenders bear the signatures of Krishnamurthy, who was Personal Assistant to the Superintendent Engineer. On December 23, 1952, the Superiatending Engineer forwarded the estimate to the Superintending Engineer, Planning Circle and asked him to obtain the technical sanction of the Chief Engineer. He added that since the work was very urgent, he was authorising the Executive Engineer (appellant) to issue the press notice the same day in anticipation of the Chief Engineer's technical sanction. As observed by the Inquiry Officer, he endorsed a copy of his letter to the Executive Engineer (appellant) and was received by the appellant's office on December 29, 1952. The appellant marked it to the Assistant Engineer with instructions to pursue it personally in the Planning Circle. The Assistant Engineer in turn marked it to the Section Officer who initialled the same on 6th of January, 1953. On December 22, 1952, the appellant had issued letters to certain newspapers forwarding the draft press notice and asking for its insertion on December 25, 1952 and December 27, 1952. In the press notice it was *inter alia* stated that the tenders will be opened on January 15, 1953. The draft of notice inviting tenders consisted of a set of documents comprised in 35 pages. The first page is the draft press notice signed by the appellant. Then follows the printed form P.W.D. 6 "notice inviting tenders", with relevant longhand entries relating to the work. After this there is the printed form P.W.D. 8 (pamphlet) which contains the general directions and conditions of contract for works on

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item rate tender. Inserted between the printed pages Nos. 2 and 3 of this form is the Schedule of Quantities which contains item 11, the subject-matter of controversy. Another document comprised in the set is the form showing approximate materials to be supplied by the Public Works Department. On receiving the draft of the notice inviting tenders and its duplicate from the office of the Superintending Engineer along with the file, the office of the Executive Engineer (appellant) took the following action: Copies of form P.W.D. 6, which was page 2 of the draft notice inviting tenders, were prepared and sent to the office of the Superintending Engineer and other local offices for being pasted on Notice Boards. These copies were despatched under despatch No. 12929/29-12. Fifty cyclostyled copies were prepared for insertion in P.W.D. 8 and for subsequent use and 12 copies of the cyclostyled Schedule of Quantities were incorporated in the tenders sold and 38 copies remained in the office and were made available for subsequent use. It may be pertinent to point out here that the procedure in such matters is that Schedule of Quantities contains blank columns when tender forms are sold to the contractors and in those blank columns the contractors enter the rates they want to quote for the various items and the monetary amount each item works out in accordance with the rates. After the work is awarded, copies of the Schedule have to be supplied to everyone concerned with the approval of the award of the work, with the accounting and auditing of the work, and with the day to day supervision of the execution of the work. The mention of despatch No. 12929/29-12 is of considerable importance as an inference has been drawn by the Inquiry Officer from the existence of this despatch number on duplicate notice inviting tenders. An argument has been advanced by the learned counsel for the appellant that if the Receipt Register in the Superintending Engineer's Office had been sent for and looked at, it would have shown that the despatch number was not with respect to the duplicate notice and further that this document though originally exhibited and brought on record, the exhibit was cancelled by the Inquiry Officer thereby causing a serious prejudice to the appellant. To proceed with the narration of facts, while finalising the set of papers called that tender for sale, the appellant is alleged to have noticed that the stock of bitumen ordered by his office was Shellmac R.C. 3; which particular quality of bitumen was

of a much higher concentration than the other cold bitumen called 'cold Emulsion'. The appellant alleges that he was of the view that the use of 6 pounds of this material per cft. grit would have been excessive and bound to cause bleeding and as the bitumen contents of 5 pounds of the above-mentioned indented material per cft. grit was in fact a little higher than 6 pounds per cft. of cold Emulsion, he in the interest of economy and efficiency proposed to change the specification in item No. 11 of the Schedule of Quantities from 6 pounds of bitumen to 5 pounds. The case of the appellant has been that he contacted the Superintending Engineer, his immediate superior, on telephone and conveyed the proposal to make the aforesaid change. The Superintending Engineer, according to the appellant gave his approval for the same there and then. Having obtained the approval of the Superintending Engineer for the proposed change the appellant made the necessary change in the draft notice inviting tenders as well as in the duplicate thereof, both of which were in the file of the case received by the appellant from the Superintending Engineer. It is further alleged that the appellant also made an endorsement on the note sheet attached to the draft notice inviting tenders that item 11 of the Schedule of items in the tender had been changed from 6 pounds to 5 pounds of bitumen content as per approval of the Superintending Engineer on telephone. It may be pertinent to point out here that in a letter (Exhibit A) dated January 22, 1955, which the appellant wrote to the Superintending Engineer Mr. Nanda, it was expressly pointed out that his approval had been obtained to the aforesaid change on telephone. We have seen the original and neither on the original nor anywhere else has Mr. Nanda recorded any note that the assertion by the appellant in the said letter was not correct. Further Mr. Nanda, the Superintending Engineer, appeared as a witness before the Inquiry Officer and stated *inter alia* that he did not remember the telephonic conversation regarding the aforesaid alteration from 6 pounds bitumen content to 5 pounds but he admitted that the proposal put forth by the appellant was technically sound and if a reference had been made to him on technical grounds he would have agreed to the same. Thereafter in January, 1953, followed the sale of tenders and the relevant register Exhibit P. 6 shows that one set of tender forms was sold on January 10, 1953; three on January 13, 1953 and eight were

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sold on January 14, 1953. It further appears from the register of tendars received (Exhibit P. 7) that out of these 12 tenders sold only 11 were received. The tenders were spened on January 15, 1953, and the tender of Ram Lal Hans, one of the contractors, was accepted being the lowest. On January 22, 1953, the appellant wrote to the Superintending Engineer, recommending acceptance of the tender of Ram Lal Hans. He also sent with his letter the comparative statement of 11 tenders and the file containing the two copies of draft notice inviting tenders as well as the notes described in the enclosures as "NIT with connected papers" to the Superintending Engineer. On February 3, 1953, the Superintending Engineer approved the award of work to Ram Lal Hans and returned 11 tenders, the comparative statement and the relevant "draft NIT with connected papers. He, however, retained with himself the other papers including the duplicate of the notice inviting tenders. On February 4, 1953, the appellant informed Ram Lal Hans of the acceptance of his tender and on February 27, 1953, the appellant wrote to the Superintending Engineer and sent one original agreement with two copies, 10 tenders, comparative statement of 11 tenders and the approved notice inviting tenders. It may also be pointed out that in this letter of 27th February, 1953, the same expression "NIT with connected papers" is used though as pointed out by the Inquiry Officer only approved notice inviting tenders and not the duplicate had been sent. On April 27, 1953, the Superintending Engineer approved and signed the agreement and returned to the appellant the original agreement, 10 rejected tenders, comparative statement and the draft notice inviting tenders. He also forwarded a copy of the agreement and of his letter to the A.G.C.R. and retained one copy of the agreement in his office. It may be mentioned that the work being of an important nature the contractor was asked to start it before the approval of the Superintending Engineer and it was actually started in February, 1953. No bitumen was used till the fourth running bill was prepared on 29th of May, 1953. The work covered by item 11 in the Schedule of Quantities was taken in hand some time in May, 1953. The procedure adopted in the execution of such works is that the Section Officer records from day to day details of the work done against each particular item. When the contractor asks for payment, an abstract of the work done till then is prepared showing the total quantities against the

particular item. The fourth running bill in which the item of bitumen figures for the first time is based upon the measurements recorded by the Section Officer in the measurement book Exhibit F. The nomenclature of the item is reproduced at page 37 of this measurement book. The said measurement book and the bill contained the figure 6 regarding bitumen quantity. The bill went to the Auditor in the appellant's office on June 1, 1953, and he passed it without any objection. On June 2, 1953, the bill was checked by the Accountant, a representative of the A.G.C.R. with reference to the original agreement in his custody and it was pointed out by him that the figure 6 should in fact be 5. The Assistant Engineer corrected the figure from 6 to 5 and initialled and dated the correction in the measurement book as well. The payment of this bill was made to the contractor on June 4, 1953. It is stated that Sudershan Kumar, Audit-Clerk corrected the copy of the bill in the Office of the Executive Engineer but the original of this office copy known as the voucher was sent from the Executive Engineer's office to the A.G.C.R. on July 20, 1953, without any correction. Dealing with this question the Inquiry Officer after pointing out that the correction from 6 to 5 was made in the office copy but not in the original of the bill sent to the A.G.C.R. said:—

> "Once again we find that we have to do a lot of detective work in the midst of conflicting versions. The Assistant Engineer says that the Divisional Accountant (Shri Vaikuntam) sent for him to the Executive Engineer's office and pointed out that according to the original agreement the entry at page 37 of the measurement book 587 should read 5 pounds and not 6. At Shri Vaikuntam's request he made the correction. The Auditor confirms this story; he was present when it took place. The Divisional Accountant, however, denies it point blank. According to him, the fourth running bill was strictly in accordance with the original agreement. His meaning is that the agreement showed 6 pounds and so did the bill. The Auditor's version is that he wrote 5 over 6 in the office copy (Exhibit E) because the Divisional Accountant told him that the agreement showed 5 pounds and not 6....."

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The Inquiry Officer again points out—

> "It is also to be remarked upon that whereas the Executive Engineer, the Auditor, the Assistant Engineer and the Section Officer all know about the change, either when it was made as alleged in January, 1953, or at any rate when the work was awarded in February or actually started in April, the only person who disclaims any such knowledge is the Divisional Accountant and yet according to the version of the others, it is he who first points out, for action in respect of the measurement book and the fourth running bill what they have all known for some time past."

It may also be pointed out that with respect to the fifth running bill prepared on July 16, 1953, the measurements entered in the measurement book again show the figure 6 corrected to 5 and the correction bears the initials of the Overseer. The casting abstract prepared with respect to this on July 18, 1953, by the same Overseer and checked by the Assistant Engineer shows a clean 5. The fifth bill is prepared on July 24, 1953, and also bears clean 5 with respect to bitumen content in item 11. The bill is also paid for on the same date. On July 22, 1953, the Overseer who initialled the measurement book with respect to the fifth running bill (Mr. Sondhi) was transferred and on July 24, 1953, the appellant went on 3½ months leave. On August 3, 1953, the Accountant supplied copies of the agreement to the Assistant Engineer for the firs time. On August 5, 1953, a decision was taken as a result of the meeting between the Superintendent Engineer and the Ministry that the work relating to item 11 be increased to almost double the quantity. A deviation statement for the additional work was prepared on September 1, 1953, by the appellant's successor Mr. Motwani and in the said deviation statement 5 pounds is mentioned in item 11 and the said statement was sent to the Superintending Engineer for approval. The sixth running bill is also prepared on the 1st of September, 1953, by completing new set of people and there again the bitumen content is mentioned as 5 and not 6. The seventh running bill is prepared on October 28. 1953, but the measurement book with respect to that again shows 6 pounds of bitumen content and not 5. The tenth

final bill was paid in March, 1954, and it is in August or September, 1954, that it was pointed out by the office of the A.G.C.R. that there was an error and over-payment had been made. The Superintending Engineer made enquiries from Mr. Motwani. The Inquiry Officer points out in paragraph 87 of his report that at page 154 of the file is a manuscript draft in Shri Sudarshan Kumar's handwriting of the reply to be sent to the A.G.C.R. It says there is no over-payment because the original agreement provides 5 pounds and not 6 and bitumen was issued accordingly. The draft is initialled by Shri Sudershan Kumar and by the Accountant (Shri H. K. L. Talwar, a witness in the Enquiry) and after approval by Shri Motwani on 20th August, 1954, is issued on 23rd August, 1954, with a copy to the Superintending Engineer. On January 10, 1955, the Superintending Engineer wrote to the appellant, who was posted at Simla, to explain the circumstances in which the change was brought about. Further the appellant's case is that he came to Delhi on tour on January 19, 1955, and met Mr. Nanda in the presence of Valkuntam, who was Accountant in the Executive Engineer's office from 1952 to 1954, and that Vaikuntam had confirmed before Mr. Nanda that the appellant had obtained telephonic approval for making the change. It is not really for us to go into the merits of the controversy inasmuch as the scope of this appeal is limited as discussed hereinafter. On 22nd January, 1955, is the letter Exhibit "A" written by the appellant to Mr. Nanda, the Superintending Engineer, from Simla and as we have mentioned already the appellant made a categorical assertion in the said letter that he had obtained his sanction in telephone for making the change. On 24th of January, 1955, the A.G.C.R. asked for a thorough investigation into the matter and it was during this investigation that the Ministry and the Chief Engineer decided to obtain certain information from different sources. They obtained from Dharampal Singh; one of the unsuccessful tenderers; his register containing his calculations for the tender with respect to the work. This is one of those documents which were rejected as inadmissible in evidence and with respect to which the appellant has made a serious grievance for he contends that this register shows that the calculation was made by the unsuccessful tenderer on the basis of 5 pounds of bitumen and not 6 which according to the appellant further shows that the correction was made

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in the tender documents before they were sold. The Inquiry Officer has said in this connection that—

> "Strictly speaking, this register is not really admissible in evidence, because there is no one to prove it. All we know is that it was obtained on behalf of Shri Rijhwani from Shri Dharampal Singh and purports to be a register kept by him in the normal course of business. But there are no dates, no signatures, no numbered pages. However, even taking it as it is, it does not seem a very weighty document."

The grievance of the appellant is that the Evidence Act is not applicable to such an enquiry and by rejecting this document as inadmissible a very serious prejudice has been caused to him. We will deal with this contention also alongwith other submissions made at the bar.

On 23rd of February, 1955, the Superintending Engineer reported to the A.G.C.R. that the change was genuinely made and there was no over-payment. On April 26, 1956, the entire relevant records of the Superintending Engineer and of the Executive Engineer, which were then in the Chief Engineer's Office, were taken possession of by the Vigilance and in June, 1956, Mr. Krishnaswamy, Joint Secretary, started preliminary inquiry and it was during this inquiry that the Vigilance Officer produced the duplicate of the notice inviting tenders from his custody on June 9, 1956, which contained correction from 6 pounds to 5 pounds. Mr. Krishnaswamy made his report in 1958 and on 11th of July, 1958, the appellant was charge-sheeted along with others. On May 13, 1959; the Inquiry Officer made his report and on the basis of the said report the appellant was dismissed on March 28; 1961. He challenged the order of his dismissal by a writ petition under Article 226 of the Constitution which was dismissed by Grover, J., by judgment, dated March 25, 1964. The present Letters Patent Appeal is directed against the said judgment.

The learned Single Judge *inter alia* held that the Inquiry Officer from certain facts of negative nature had come to the conclusion that the correction in the draft notice inviting tenders was made unauthorisedly after Shri Ananthakrishanan's report in April, 1956 and that there was force in the suggestion of the learned counsel for

the appellant that the finding of the Inquiry Officer with regard to the duplicate notice inviting tenders was based on pure surmise and conjecture and also suffered from the infirmity that neither the despatch nor the receipt clerks had been produced with regard to the despatch number from which the Inquiry Officer drew a number of inferences to support his view that the duplicate notice inviting tenders had been sent to the Superintending Engineer's office on 29th December, 1952 and not later on in January, 1953 as alleged by the appellant. According to the learned Single Judge, however, the mere fact that the decision of the Inquiry Officer regarding alteration of the duplicate notice inviting tenders is based on conjecture did not vitiate the finding on the charges since they are not based on that conclusion alone. The learned Single Judge observed—

> "The Inquiry Officer has dealt with the entire evidence at great length and this evidence consisted not only of the duplicate N.I.T. but also of the attested copies of the documents which were in the office of the Superintending Engineer and which were sent to the Accountant-General, Central Revenues, including the running bills as also the tender forms which had been sold to the tenderers and the corrections which had been made therein as also in the draft and the duplicate N.I.T. which bore no date and the evidence given by the officials of the department as also the records maintained in the departmental offices."

The learned Single Judge, therefore, concluded that the ultimate findings given by the Inquiry Officer in respect of the various charges could not be said to be based on conjecture. His Lordship did not accept the applicability of the principle sought to be invoked by the learned counsel for the appellant that if the findings of a quasi-judicial body are based partly on evidence and partly on surmise and conjecture such findings cannot be considered good. The learned Single Judge, however, did hold that in case it had been shown that there was no evidence at all to support the findings of the Inquiry Officer, the principles enunciated in *Union of India* v. *H. C. Goel* (1), would have been applicable.

(1) A.I.R. 1964 S.C. 364.

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We now proceed to consider the various contentions raised before us by the learned counsel for the appellant. The foremost and the most important contention that has been raised by Mr. Andley is that the report of the Inquiry Officer is based on no evidence and that if it is based partly on evidence and partly on surmise and conjecture the findings would stand vitiated in view of the decisions of the Supreme Court, in *Dhirajlal Girdharilal* v. *Commissioner of Income-tax, Bombay* (2), and *Omar Salay Mohamed Sait* v. *Commissioner of Income-tax, Madras* (3). Submits Mr. Andley that there is no evidence directly supporting the findings of the Inquiry Officer who has rejected the evidence of all the witnesses and then proceeded to come to the conclusion purely on surmise and conjecture. Mr. Parkash Narain submits that though there is no tangible direct evidence the Inquiry Officer was entitled to make his deductions from different events. He contends that from the following circumstances the Inquiry Officer has legitimately drawn his conclusions:—

(i) There is a note on the sold tenders signed by the appellant that there was no over-writing. This, according to the learned counsel, shows that there was no over-writing at the time the tenders were sold;

(ii) Different positions taken by the appellant at different stages of the inquiry. Mr. Parkash Narain had drawn our attention to paragraph 32 of the Inquiry report;

(iii) Corrections in sold tenders were not dated; and

(iv) Under paragraph 56 of the C.P.W.D. Code the sanction for such a change from 6 pounds to 5 pounds had to be taken from the Ministry.

Regarding the first circumstances it was never put to the appellant even in his searching examination during the first three days of Inquiry or at any later stage. May be that this note meant that there was no over-writing by the contractor or may be the appellant had some other very plausible answer. We are of the opinion that in the

(2) (1954) 26 I.T.R. 736.
(3) (1959) 37 I.T.R. 151.

circumstances the conclusions drawn by the Inquiry Officer could not possibly be drawn from the above. It may also be pointed out that we need not go into the question whether the sanction of the Ministry was necessary or not for Mr. Nanda had categorically stated in his evidence that he was competent to give such a sanction. Since we agree with the submission of the learned counsel for the appellant that the decision is based on no evidence we are not called upon to decide the validity of Mr. Andley's alternate argument mentioned above. Before we deal with the other findings we might straightaway express our agreement with the finding of the learned Single Judge that the conclusion of the Inquiry Officer with regard to the alteration of the duplicate notice inviting tenders is based on conjecture. The perusal of the paragraphs 27, 28, 59, 95 and 122 really supports the submission of Mr. Andley that the Inquiry Officer has acted merely on suspicion and conjecture. We are also impressed with the argument of Mr. Andley that in the absence of examination of the receipt register in the Superintending Engineer's Office, which register was originally exhibited and then cancelled, it was not appropriate for the Inquiry Officer to come to the conclusion that the despatch No. 12929/29-12 on the duplicate notice inviting tenders indicated that it was actually sent back to the Superintending Engineer's Office along with the form 6 referred to in Exhibit P. 66 and consequently the duplicate N.I.T. was not with the appellant after 29th December, 1952. It is pertinent to quote the finding of the Inquiry Officer in this behalf:—

> "Now the difficulty is that if the duplicate N.I.T. (Exhibits T & W) did in fact come to the Executive Engineer's Office and remained there till it was sent back along with his letter of 22nd January, 1953, in what circumstances does the despatch number 12929/29-12 come to be on it? Does this despatch number not indicate that it was actually sent back to the Superintending Engineer's Office along with the form 6 referred to in Exhibit P. 66? In Q. 35-36/23-2-1959, Shri Govil admitted this could have happened but the next day, for obvious reasons, withdrew. If this is what actually happened, then the duplicate N.I.T. was not with Shri Govil after that date and his version of how

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Exhibit T comes to bear the correction in item 11 stands contradicted. In that event the only alternative conclusion is that he obtained access to the document at some subsequent stage and corrected it."

After stating as above, the Inquiry Officer goes into all type of guess work as to what could and must have happened which, in our opinion, is not legitimate for any quasi-judicial body to do, particularly when the material could have been available which could have served as positive evidence in coming to the conclusion one way or the other. In our opinion, the learned counsel for the appellant is right when he says that if the receipt register of the Superintending Engineer's office had been taken into consideration and had not been excluded out of the category of exhibited documents it may have shown that the despatch number was not with respect to the duplicate N.I.T. According to Mr. Andley the register shows against receipt under this despatch number that it was directed to be put on the notice board and there could have been no direction with regard to the duplicate notice inviting tender to be put on the notice board. It is not necessary to quote *in extenso* from the report and it is enough to say that the perusal of the report, and particularly of paragraphs already mentioned above, does lead us to the conclusion that there was no evidence in support of the conclusions and they are based on speculation and guess work. We are not unmindful of the limitations imposed on our powers to review the findings of the Inquiry Officer, the scope of which review is fairly limited. But whatever be the limitations it is beyond dispute now that it is open to us to consider and hold unlawful and set aside any agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power privilege, or immunity; (3) in excess of statutory jurisdiction, authority, limitations, or short of statutory right; (4) without observance of procedure required by law; (5) violative of principles of natural justice; and (6) unsupported by any evidence. In our view, the learned Single Judge was in error in holding that though the finding as to the duplicate notice inviting tenders was based on conjecture there was other evidence to support the findings. It is significant

to point out that according to the appellant this change in item 11 had no meaning whatsoever for it could benefit no one. Submits the learned counsel for the appellant that payment of the 4th bill was only in account and there could have been ultimately no over-payment to the contractor since the bitumen had to be supplied by the Government and it had to be adjusted on the basis of the actual consumption. Mr. Parkash Narain does not agree with this submission of Mr. Andley and submits that there was a financial loss to the Government inasmuch as tenders had been invited on the basis of 6 pounds of bitumen and in case they had been invited on the basis of 5 pounds the rate quoted by the tenderers would have been lower. This would again be a matter of guess and conjecture and contrary to the positive evidence on the record. B. Nath an employee of the successful tenderers appeared as a witness and stated that the tender had been submitted and calculations made on the basis of 5 pounds of bitumen. No other tenderer had been produced and Mr. Andley submits that even they would have supported the appellant's case that their calculations were made on the basis of 5 pounds bitumen. He places strong reliance on the register obtained by the Ministry and the Chief Engineer from Dharampal Singh, one of the unsuccessful tenderers which also shows that the calculations were based on 5 pounds of bitumen content. It is about this register that the Inquiry Officer had observed that it was really not admissible in evidence because there was no one to prove it. Surely it was for the department to prove their case and the Inquiry Officer could not give benefit to the department in case no one had been produced to prove the register. Even there the Inquiry Officer has indulged in surmise and conjecture when he says—

> "In actual fact, Shri Dharampal Singh, as his rejected tender shows, quoted Rs. 23 for this item. That shows that he was calculating for the item at 6 pounds (excluding profit) just as he seems to have calculated Rs. 21 on the basis of 5 pounds (excluding profit). In other words, there is a contradiction between the nomenclature on the left hand side at 5 pounds and both the rate of Rs. 24 entered on the right hand side and the rate of Rs. 23 actually quoted."

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It is next submitted by the learned counsel for the appellant that the rules of natural justice have been violated inasmuch as (1) the appellant was cross-examined for three days at the very start of the inquiry without any evidence on behalf of the department having been recorded. In support of his contention he relies upon *Associated Cement Companies Ltd.* v. *Their Workmen and another* (4) and (2) the Inquiry Officer referred to the personal file without putting to the appellant what is found therein and not only gleaned from that file that he came between 8th September, 1954 and 15th September, 1954, to Delhi but also had contact with the Executive Engineer's Office. Reliance is placed on paragraph 95 of the report where it is said—

> "Would it be very unfair to Shri Talwar, we may ask, if we took it as a reasonable deduction from these facts that actually he got this information from Shri Sudarshan Kumar, his own Accounts Clerk and Auditor? Furthermore, we are justified in taking note of the fact that Shri Govil was on tour from Simla, where he was then posted, to various places in the Punjab between 6th September, 1954 and 13th September, 1954. This information has been gleaned from his personal file in the Chief Engineer's Office. It has not been exhibited in this inquiry because it is a confidential document but we can take cognisance at least of the bare existence of a possibility that there was contact between Shri Govil and the Executive Engineer's Office at this time."

Again from the fact, which was taken from the parsonal file, that the appellant had applied for leave from 15th of April, 1953, and again from May 5, 1953, the Inquiry Officer concluded that there was a collusion between the appellant and the contractor. The Inquiry Officer further concludes that the appellant must have cancelled the leave applied for by him in the circumstances set out in paragraph 115 of the report. It is submitted by Mr. Andley that although the file may have shown that the appellant came to Delhi between 8th September, 1954 and 15th September, 1954 and that he applied for leave on two occasions but it was not open to the Inquiry Officer to draw any conclusion from

(4) (1963) 2 L.L.J. 396 at P. 399.

this file without putting it to the appellant, particularly when the file had not been made a part of the record. He draws our attention to the observations of the Inquiry Officer in this behalf that—

> "This information has been gleaned from his personal file in the Chief Engineer's office. It has not been exhibited in this inquiry because it is a confidential document but we can take cognisance at least of the bare existence of a possibility that there was contact between Shri Govil and the Executive Engineer's Office at this time."

(3) The Inquiry Officer relied on the report of Shri Guha. dated the 14th of February, 1956 although he had not been produced as a witness. The said report was made use of without putting it to the appellant and without informing him that the Inquiry Officer would rely on the same. In this connection Mr. Andley has invited our attention to paragraphs 121 and 122 of the said report; (4) An exhibited document being receipt register in the Superintending Engineer's office was initially marked as an exhibit but the Inquiry Officer cancelled the same and thereby ruled it out of consideration. According to Mr. Andley the receipt register would have conclusively shown that the despatch No. 12999/29—12 was not with respect to the duplicate of the notice inviting tenders. It is further submitted that similarly the register obtained from Dharam Pal one of the unsuccessful tenderers, was ruled out of the consideration on the ground that the same was really not admissible in evidence because there was no one to prove it; (5) The Inquiry Officer rejected the deviation statement, dated 1st September, 1953 which was prepared on the basis of 5 pounds of bitumen on the ground that the same must have been prepared on that basis by mistake. Mr. Andley invites our attention in this connection to paragraphs 66, 68, 70 and 73 of the report. Mr. Andley further submits that negligence on the part of these charged with the duties of preparing deviation statement has been assumed without examining those persons as witnesses; (6) The first four pages of the notes in the Superintending Engineer's file containing the orders in respect of the work in question have not been produced and have been suppressed by the Department. According to Mr. Andley the appellant's

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case was that the telephonic sanction obtained by him with respect to the change of the quantity of bitumen was noted in the notes portion and if those pages had been produced they would have conclusively established the appellant's case; (7) The other unsuccessful tenderers were not produced who, if produced, would have supported the appellant's case that each one of them made their calculations on the basis of 5 pounds of bitumen.

Regarding cross-examination of the appellant the Inquiry Officer appears to have done precisely what the Supreme Court said in *Associated Cement case* should not be done. In this connection we cannot do better than quote the observations of my Lord the Chief Justice of India:—

> "The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the present enquiry by which Malak Ram was elaborately cross-examined at the outset constitute another infirmity in this inquiry."

We have carefully looked into the questions put to the appellant by the Inquiry Officer and are satisfied that the cross-examination was such as was bound to lead to failure of justice. No witness had been examined when the appellant was subjected to that type of elaborate cross-examination and this, in our view, is a serious infirmity in the enquiry. We are also satisfied that reference to the personal file of the appellant constituted another infirmity in the enquiry. May be that the facts taken from the file were correct but unless the appellant was told that a particular inference was sought to be or could be drawn from those facts he had really no opportunity to show that that was not a possible inference. The inferences drawn by the Inquiry Officer from reference to this personal file were that the appellant met the Chief Engineer in April, 1956, and that he was in collusion with the contractor. In paragraph 115 of the report, the Inquiry Officer has dealt with this part of the case. If this aspect of the matter had been pointed out to the appellant, he might have had a perfect explanation demonstrating that the circumstances were such as would not justify any inference of this type.

Now we come to non-production of Mr. Guha and reference to his report. The report of Mr. Guha has been extensively relied upon by the Inquiry Officer. The explanation offered regarding his non-production is that he had been cited as one of the witnesses by the appellant and later the appellant dropped him. That, in our view, is no justification for non-production of Mr. Guha and for not providing the appellant with an opportunity to cross-examine him. The enquiry is in a way of a quasi-criminal nature and it would be for the prosecution to produce evidence which establishes the guilt of the person charged. Similarly cancelling of an exhibited document was also an unprecedented procedure adopted by the Inquiry Officer. A document which had been brought on record could not be ruled out of consideration if it had a bearing on the points in issue. The Inquiry Officer, performing quasi-judicial duties, is bound to consider materials on the record and come to a fair finding. The receipt register in the Superintending Engineer's Office was an important document particularly in view of the fact that it would have explained the circumstances regarding the presence of despatch number on the duplicate of the notice inviting

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tenders. The Inquiry Officer has laid great emphasis on the presence of the despatch number on the duplicate of the notice inviting tenders and has therefrom drawn an inference that the duplicate was actually sent back to the Superintending Engineer's Office along with form 6. From that the Inquiry Officer further concludes that the duplicate N.I.T. was not with the appellant after the 29th December, 1952. In our opinion Mr. Andley is right that in cancelling the exhibit a serious prejudice was caused to the appellant. Regarding the register taken from Dharampal Singh, one of the unsuccessful tenderers' we have already discussed how the Inquiry Officer indulged in surmise and conjections regarding the rates quoted by Dharampal Singh, We, therefore, need not consider whether in rejecting the said register out of consideration any prejudice was caused to the appellant or not.

Now we come to the non-production of the first four pages of the notes. Mr. Andley submits that at no stage of the proceedings was any suggestion made that the appellant had in any manner been a party to the disappearance of the said 4 pages. As a matter of fact Mr. Parkash Narain informed us that some other person has been charge-sheeted for the removal of the said 4 pages. In spite of the fact that there was no allegation against the petitioner regarding the disappearance of the said 4 pages the Inquiry Officer observed—

> "Again we notice that there is no referance in the relevant notes portion of the Superintending Engineer's file (Exhibit R) or in the memorandum to the correction to which the Superintending Engineer was supposed to have given authority on the telephone."

May be that the 4 pages had been done away with by somebody else but we would like to point out that it was for the Department to make out that case and show to the satisfaction of the Inquiry Officer that non-production of the 4 pages was not due to any fault of the Department. In our view the cummulative effect of all these circumstances is that the inquiry suffers from serious infirmities resulting in the disregard of fundamental principles of natural justice. In the circumstances the appeal will be allowed

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

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D. K. MAHAJAN, J.—I entirely agree.

Mahajan J

B.R.T.

APPELLATE CIVIL

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

SHUSHIL KUMAR SANGHI,—*Appellant.*

versus

R. R. KINI,—*Respondent.*

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

February, 22nd 1965

Companies Act (I of v956)—Ss. 10-A, 235 and 240—Investigation ordered by Central Government into affairs of a company—Officer of the company refusing to answer questions put to him by Inspector on the ground that criminal charge is pending against him in a Court—Constitution of India (1950)—Art. 20(3)—Protection under—Whether can be claimed on vague allegations—Jurisdiction of Tribunal constituted under S. 10-A of Companies Act (I of 1956)—Extent of—Two inspectors appointed to carry out investigation jointly or severally—One of them alone—Whether can act.

Mehar Singh, J.

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

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