

(1980) 12 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 2471 of 1980

Narayandas Jaskaranji Rathi and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 08-12-1980

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 452, 452(1)

Citation : (1980) 12 BOM CK 0032

Hon'ble Judges : P.G. Palshikar, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : M.A. Rane, for the Appellant; Bhimrao N. Naik and C.J. Sawant, A.G.P., for the Respondent

Judgement

P.G. Palshikar, J.—The petitioners are the Councillors of the Municipal Corporation of City of Solapur, which was Constituted on 1st May, 1964 under the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as the Act). There are about 65 elected Councillors and the last elections were held on 8th June, 1975. Under the Act the tenure of the office of Councillors is five years. The term of these Councillors commenced from 23rd June, 1975 and was to come to an end on 22nd June, 1980. However, by a notification issued by State Government on 20th May, 1980 the term of office of the elected Councillors was extended till 30th November, 1980. So, the term of office of the present Councillors was to expire on 30th November, 1980.

2. But before the extended term could expire, on 12th August, 1980 a notice was served upon the 2nd respondent-Corporation asking it to show cause why the corporation should not be superseded and why the Administrator be not appointed. This notice was issued u/s 452 of the Act which reads as under :

"452(1) If at any time upon representation made or otherwise it appears to the State Government that the Corporation is not competent to perform or persistently makes default in the performance of, the duties imposed upon it by or under this Act or any other law for the time being in force or exceeds or

abuses its powers, the State Government may, after having given the Corporation an opportunity to show cause why such order should not be made, by an order published, with the reasons therefore, in the Official Gazette, direct that the Corporation shall be superseded for a period to be specified in the order. Such period may be longer than the term for which the Councillors of the Corporation would have held office u/s 6, if the Corporation had not been superseded under this section.

(2) When an order is made under sub-section (1), the following consequences shall ensure :---

(a) all the councillors shall, as from the date of the order of supersession, vacate their office as such councillors;

(b) if the State Government so directs in the order, the members of the Transport Committee shall, as from the said date, vacate their offices as such members;

(c) all powers and duties of the Corporation, the Standing Committee and, if the State Government has directed that the members of the Transport Committee shall vacate office, the Transport Committee under this Act or under any other law for the time being force shall, during the period of supersession, be exercised and performed by such person or persons as the State Government from time to time appoints in this behalf;

(d) all property vested in the corporation shall, during the period of supersession, vest in the Government;

(e) the person or persons appointed under Clause (c) may delegate his or their powers and duties to an individual or to a committee or sub-committee.

(3) The State Government may from time to time after inquiry made, by an order published in the Official Gazette, direct that the period of supersession with all the consequences aforesaid shall be continued until such date as is specified in the order.

(4) The Corporation shall be re-established on the expiration of the period specified in the order of supersession under sub-section (1) as continued from time to time by order under sub-section (3) by the election of Councillors at general ward elections held in accordance with the provisions of this Act.

Provided that the person or persons appointed under Clause (c) of sub-section (2) shall continue to exercise the powers and perform the duties of the Corporation, the Standing Committee and, as the case may be, the Transport Committee until the first meeting of the Corporation Constituted by the election of Councillors as aforesaid shall have been held."

Under sub-section (1) of section 452 the State Government is empowered to supersede the Corporation if it appears to the State Government that the Corporation is not competent to perform its duties or persistently makes default in the performance of the duties imposed upon it by or under the Act or any

other law for the time being in force. It also empowers the State Government to supersede the Corporation in the event the Corporation exceeds or abuses its powers. Before superseding the Corporation a show cause notice to that effect has to be served upon the Corporation and it also contemplates that an opportunity to show cause why such order should not be made, be given to the Corporation. In the present petition we are not concerned with the other sub-section of section 452 of the Act.

3. When we turn to the show-cause notice dated 12th August, 1980 we find that the notice recites that it has been brought to the notice of the Government that the Solapur Municipal Corporation is not competent to perform the duties imposed upon it by or under law. One has persistently made defaults in the performance of the duties imposed upon it by or under law and has abused its powers which was evident from the instances quoted in the said notice. It appears that the preamble of this notice is nothing but a repetition of section 452(1) of the Act. Now, the instances which are quoted are as follows :

i) While purchasing mild and tor steel from M/s. Bimal Traders, certain irregularities were committed. The first irregularity pointed out is that no tenders were invited and the contract for the purchase of steel was contrary to the provisions of section 73 of the Act read with rules in Chapter V of the Schedule accompanying the Act. It was also alleged that no security was taken from the contractor even though security deposit is to be obtained as per Rule 3 of the Rules in Chapter V thereof. Another irregularity was that 8.52 lakhs i.e. 50% of the price of steel to be purchased was paid in advance though there was no provision in the Act for payment of such advance amount. It was said that the financial interest of the Corporation was not safeguarded. The next irregularity was that u/s 84 of the Act an amount in excess of Rs. 100/- has to be paid by cheque, but the amount of Rs. 8.52 lakhs was paid by demand draft. After quoting these instances it was stated in the notice that in view of the seriousness of these irregularities the Government by letter dated 17-12-1979 advised the Corporation to suspend the City Engineers Shri S.B. Bubne, but the Corporation failed to take note of the seriousness of the irregularity and did not take proper and adequate immediate action against the City Engineer and thus made default in performance of its duties.

ii) In respect of the case known as Black Water case which was decided by the Corporation, a department enquiry was held against Shri P.S. Kothavale, the Public Health Engineer, by the Municipal Commissioner. After completion of the enquiry the Commissioner submitted a report on 5-9-1977 to the Corporation holding that the charges were proved. The Municipal Commissioner recommended a penalty of removal of Shri P.S. Kothavale from municipal service which does not disqualify him from future employment; but the corporation by its resolution date 17-10-1978 reinstated Shri Kothavale and treated two years period of suspension as punishment. According to the State Government the Corporation had taken a lenient view of the matter. The State Government was,

therefore, of opinion that the Corporation failed to take proper and adequate action against Shri Kothavale, the Public Health Engineer, and committed default in performance of its duties.

iii) In respect of the said Black Water Case a departmental enquiry was held against Shri S.A. Pujari, the Assistant Municipal Commissioner, and the charges were proved against him. The Inquiry Officer recommended stoppage of one increment, but the Corporation let off Shri Pujari without any punishment. The Corporation, therefore, failed to take proper and adequate action against Shri Pujari and thus made default in the performance of its duties.

iv) Another charge which was levelled against the Corporation in the said notice was that one Shri S.M. Mengane laid a pipe line by breaking up a part of the street without prior permission. Such action is prohibited u/s 239(1)(a) of the Act. The Municipal Commissioner, therefore, proposed that certain amount which according to him was reasonable should be charged to Shri S.M. Mengane for this breach; but the Corporation in the Standing Committee decided to waive these charges and a compounding fee of Rs. 50/- was charged. This was reduced from Rs. 500/- to Rs. 50/- and road opening fee of Rs. 6003/- was completely waived. According to the State Government the Standing Committee of the Corporation abused its powers.

v) The last charge was that the Corporation passed a resolution on 22-5-1980 and proposed to grant concession in octroi tax to the industrialists whose industries were outside the limits of the Corporation. The allegation was that if this resolution was implemented after following the prescribed procedure, a loss of Rs. 25 lakhs per year would have been caused to the Corporation. According to the State Government the Corporation abused its powers by passing such a resolution involving financial loss to the Corporation.

4. Upon these charges the Government proposed to take action of supersession u/s 452(1) of the Act. The petitioner or the Corporation did not file any reply to this show-cause notice, but they challenged the said show-cause notice in the present petition.

5. Shri Rane, the learned Counsel for the petitioners, argued that the charges which are levelled against the Corporation in the notice dated 12-8-1980 were outside the purview of section 452(1) of the Act, According to him each one of the charges does not amount to any persistent default in the performance of the duties or any abuse or excess of powers by the Corporation. He further argues that this show-cause notice was a result of the mala fide intention of the State Government. He stated that the majority of the members in the Corporation belonged to the Congress (U) Group and a few of them belonged to the Congress (I) and other Groups. When the Congress (I) came into power in the State, efforts were made to defect the Congress (U) members to Congress (I) and since the Congress (U) failed in their attempt the Minister of State for Food and Civil Supplies Shri Dinanath Kamble Guruji had declared at a Press Conference held at

Solapur that the Government would take action upon the complaints which were received by the Government against the Corporation and they would give a decision on the said complaints within three days. According to the petitioners he declared this on 6-7-1980 and this news was circulated in the local papers at Solapur on 7-7-1980 and the show-cause notice was issued on 12-8-1980 which was received by the Mayor on 14-8-1980. The petitioners have also made other allegations in the petition on this subject. We will deal with the same at a later stage in this judgment. Shri Rane has taken us through all the charges and submitted that apart from these charges being frivolous, in fact they were misconceived and the Government before issuing the show-cause notice did not apply its mind to record before framing these charges. According to Shri Rane, a close scrutiny of these charges along with the record clearly shows that the Government wanted to supersede the Corporation in some manner and under any circumstances and for that purpose these charges were invented.

6. Shri C.J. Sawant, Additional Government Pleader, and the learned Counsel for the State, argued that the petition was premature because only a show-cause notice was issued to the Corporation and no further action was taken. He submitted that the Corporation has not even filed its reply to the show-cause notice. He argued that an opportunity of being heard on these charges would be given to the petitioners and it is only in the event of any order going against the Corporation that they could approach this Court for a relief. He also assured that the Government would grant sufficient time to the corporation to approach the higher courts for relief. On the merits of the charges he submitted that each one of the charges was serious. According to him the irregularities which are pointed out in Charge No. 1 are themselves the acts of non-performance of duty or abuse of power by the Corporation. According to him these three irregularities pointed out in charge No. 1 were also the charges which the Government considers serious. He justified the show-cause notice and submitted that this Court may not interfere with the action proposed by the State, at this juncture. He also submitted that all the charges were well within the ambit of section 452(1) of the Act and were serious enough to warrant supersession. He further argued that this Court cannot inquire into the merits of the charges levelled against the Corporation with reference to various documents produced by the petitioner.

7. Shri Rane, the learned Counsel for the petitioners, submitted in reply that the irregularities pointed out in the charge are not the charges for the purpose of supersession by the Government, but after quoting these irregularities the real charge is that in spite of the advice by the Government to take action against the City Engineer the Corporation did not take proper and adequate action against him, and that amounted to non-performance of the duties. He further submitted that these irregularities were committed by the then Commissioner and the Corporation had taken all steps to prevent any losses. He referred to various resolutions of the Corporation and the Standing Committee for that purpose.

8. It cannot be forgotten that the order of supersession of the Corporation is to

some extent penal in nature and casts a stigma on the Councillors as well as the statutory Corporation. It indirectly affects the electorate who have duly elected the Councillors or members of Corporation. These local self Government are established apparently in pursuance of the policy of developing local self Governmental institutions as a part of the larger policy of decentralisation of the power, so that democratic set up will have strong and deep root in the community at large. It is inherent in this very process that elected representatives are entitled to take certain decisions obviously in good faith and in public interest. But only because in its wisdom a decision is taken by these representatives, which is not liked by the Government or about which two opinions are reasonably possible, the Corporation is not liable to be superseded in the absence of anything more. Unless from the material placed before the Government, it appears to the Government that such a drastic and extreme action is called for merely on the basis of some ipse dixit such an action cannot be initiated. The scrutiny of record is necessary even at the initial stage of issuing show-cause notice. In a democratic society it is of essence that democratic institutions which are part and parcel of the scheme of decentralisation of power are allowed to function and not superseded light-heartedly.

9. In this case petitioners have given details as to why such an action is being taken. The petitioners have also given details about each and every charge and hence prima facie demonstrated that the whole action was uncalled for. By making specific allegations giving details they have alleged that the order is being issued in undue haste and the show-cause notice is also issued for some ulterior purpose. They have also shown by supplying sufficient details that there could be no material on the basis of which even a show-cause notice could be rationally issues. It is also an admitted position that even after the expiry of the term of Corporation the Government itself extended the term up to 30-11-1980 vide notification dated 20th May, 1980. Thus according to the petitioners till that day Government had not found anything wrong with the Corporation and now on the basis of wholly insignificant and stale ground this action is being taken in colourable exercise of the power. In this case before issuing rule nisi respondent Government was heard even before admission of the petition. Time was granted to the respondent Government to file reply by 29-9-1980. Thereafter also case was adjourned from time to time but till today no return has been filed. It is also alleged by the petitioners that a decision to supersede is already taken and the alleged giving of an opportunity to show cause is merely a force. It is also their case that at the stage of final hearing only a statement is being made that though the law does not prescribe, the Government is prepared to give some time to petitioners to enable them to seek relief from courts of law, in case order goes against them. According to the petitioners this is merely an eye-wash and the thread of supersession is real and eminent and the notice issued as also wholly without jurisdiction. It is in the light of these facts and allegations, which have gone uncontroverted, that we are deciding this case having regard to the

peculiar facts and circumstances of this case.

10. When a show-cause notice is issued for the supersession of the Corporation, normally this Court would be reluctant to interfere at that stage unless it appears that the action is mala fide or is outside the purview of the relevant provisions of law. However, in the first place what we have to see is whether these charges are outside the scope of section 452(1) of the Act. If they are so, then certainly such a show-cause notice cannot be sustained. This is more so in view of the imminent threat of illegal order of supersession being passed, and absence of any remedy in that behalf. When we consider the first charge, it appears that after pointing out the irregularities the real charge is that even though the Government had advised the Corporation to suspend the City Engineer Shri Bubne and take action against him, so such action was taken in a proper and adequate manner and thus there was a default in performance of its duties. In our opinion, therefore, the charge really is that the Corporation failed to take proper and immediate action against the City Engineer Shri Bubne in view of the serious irregularities committed in the purchase of steel, and the irregularities are pointed out only to emphasise and illustrate the gravity of the action to be taken against the officer concerned as advised by the Government.

11. Before we deal with these charges it would be worthwhile to note particularly sub-section (1) of section 452 of the Act. Firstly, it must appear to the State Government either upon representation made or otherwise that the Corporation is not competent to perform its duties or persistently makes default in the performance of the duties imposed upon it by or under the Act or any other law for the time being in force, or it must also appear to the State Government that the Corporation abused or exceeded its powers. It is open to the State Government to supersede the Corporation on any one of these grounds. When we consider the ground that the Corporation is not competent perform its duties or persistently makes default in the performance of its duties imposed upon it by or under the Act or any other law for the time being in force, we must see that such a duty is cast upon the Corporation either by the Act or any other law for the time being in force. If a particular charge is shown not to fall within the duties of the Corporation either under the Act or any other law for the time being in force, such a charge cannot form the basis of a show-cause notice u/s 432(1) of the Act. It must be shown that there is a duty cast upon the Corporation to do a certain thing or not to do a certain thing and the Corporation by its conduct has shown that it is incompetent to perform that duty or while performing that duty it makes persistent defaults. What is the meaning of "persistently makes default" has been a subject-matter of various decisions under different enactments. We may usefully rely upon the judgment of this Court in *The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another*, We have also to consider that if the Corporation exceeds or abuses its power then also an action u/s 452(1) of the Act can be taken. For that purpose we have to find out what are the powers of the Corporation under the Act and whether the Corporation has exceeded such powers or abused the same. If the circumstances

exist which points out the incompetency of the Corporation to perform its duties or which establish that in the performance of such duties persistent defaults are made or the Corporation exceeded or abused its power in a particular manner, action u/s 452(1) of the Act is amply warranted; but in the absence of any such circumstances appearing to the Government, in our opinion even a show-cause notice cannot be issued and if such notice is brought to the notice of this Court, there should be no hesitation to strike it down. It must be borne in mind that section 452 makes a serious inroad upon the powers and functions of the Local Self Governments like the Corporation. What is to be mean is that such local Authorities function within the powers conferred upon them by law and that such powers are not abused or exceeded in any manner which would warrant an action under this section.

12. When we consider the first charge, it appears that certain serious irregularities, according to the Government, were committed purchasing steel from M/s. Bimal Traders and when these were pointed out, the Government by its letter dated 17-12-1979 had advised the Corporation to suspend the City Engineer and take action against him, but the Corporation failed to take proper and adequate action against him. This, according to the Government, was a default in the performance of duties. Now the question that arises is : Is it the duty of the Corporation to either suspend the City Engineer or take immediate action against him upon the advice of the Government ? Can it be said that the Corporation failed in its duty in not taking action as per advice of the Government ? In this connection we may refer to section 448 of the Act which empowers the State Government to require performance of duties by a Municipal Authority. It lays down that if it appears to the Government upon complaint or otherwise that a default has been made in the performance of duties imposed on any of the Municipal Authorities by or under the Act or by under any enactment for the time being in force, the State Government, may if satisfied after due inquiry that the alleged default has been made, make an order prescribing a period for the performance of that duty provided that, except in any case which appears to the State Government to be one of emergency, no such order shall be made until after the expiry of one month from the date of service of a written notice on the Corporation. If the duty is not performed within the period prescribed in an order made by the State Government, then the Government has a further power to appoint some person to perform the said duty and the expense of performing such duty, together with reasonable remuneration to the person performing the same and the cost of the proceedings u/s 448 have to be paid out of the municipal fund.

13. Now, it is not the case of the State Government that at any time any such action u/s 448 of the Act was taken. It does not appear from the record that at any time the Corporation had refused to take any action against the City Engineer. If the Corporation had defaulted in taking any action against the City Engineer, an order as contemplated by section 448 of the Act could have been made by the Government; but in the absence of any such order, it cannot be said

that the Corporation was incompetent or had refused to perform any duty. In our opinion, before a conclusion can be reached that either the Corporation is not competent to perform the duties or persistently makes default in performance of duties, an order u/s 448 of the Act is called for, because this section empowers the Government to require the Corporation to perform its duties in the event of any default by or any of those authorities. It must appear to the Government that the Corporation has been incapable of or refusing to perform certain duties. It is the total incapacity on the part of the Corporation to perform its duties that would give rise to a drastic action like supersession, but certainly in this case it cannot be said that in not taking proper and adequate immediate action against the City Engineer as advised by the Government any default in the performance of its duties was committed by the Corporation. Apart from this, the irregularities pointed out in this charge were committed by the then Commissioner. Reference may be made to section 73 of the Act which empowers the Commissioner to execute contracts on behalf of the Corporation. Section 74 lays down the mode of execution of contracts and such a mode is laid down by the rules. It would, therefore, appear that while executing the contract if any irregularities are committed, they cannot necessarily be imputed to the Corporation.

14. So far as the second charge is concerned, it appears that Shri P.S. Kothavale, Public Health Engineer, was found guilty of certain charges upon an enquiry held by the Municipal Commissioner. The Commissioner recommended the penalty of removal of Shri Kothavale from municipal service which would not disqualify him from future employment; but the Corporation only treated the period of suspension of two years as adequate punishment. This, according to the State Government, was taking a too lenient view of the matter and since no proper and adequate action against Shri Kothavale was taken by the Corporation, there was a default in the performance of its duties. This charge, in our opinion is clearly outside the purview of section 452(1) of the Act. The Municipal Commissioner was only the enquiring authority into the charges against Shri Kothavale. He submitted his report that Shri Kothavale was found guilty of certain charges and recommended a penalty of removal. However, it was ultimately up to the Corporation to decide whether a lenient view of the matter should be taken or a serious action was necessary. If the Corporation in its wisdom decides to take a particular view which may appear to be lenient to the State Government, it cannot be termed as default in the performance of its duties. The Corporation was not bound by the recommendation of the Municipal Commissioner. After considering the report the Corporation had to come to its own independent judgment in the matter and has taken particular view. Merely because the recommendation of the Municipal Commissioner is not accepted, it cannot be said that here was a default in the performance of its duty by the Corporation. No doubt Shri Kothavale was punished and the punishment was suspension for two years. Since the Corporation thought it fit to award that much punishment, it cannot be blamed for not performing its duty. Same is the case when we peruse the third charge. Upon an enquiry by the Municipal Commissioner against Shri

S.A. Pujari, the charges were proved and the Commissioner recommended punishment of stoppage of one increment, but the Corporation did not think it proper to inflict any punishment upon Shri Pujari. This action was said to be a default in the performance of its duties. For the reasons stated above in respect of the second charge, this also is clearly outside the provisions of section 452(1) of the Act. We may observe that committing a default in the performance of duty is not by itself a ground to invite any action u/s 452(1) of the Act. As already indicated, it must appear to the State Government that inspite of the order u/s 448 or any other corresponding provision in the Act the Corporation goes on committing the same default over and over again in defiance of the orders issued under the law. What is contemplated is persistent attitude in committing defaults in the performance of duties and not merely a default here and there. Considering these three charges, we are of the opinion that they do not fall under any of the requirements of section 452(1) of the Act.

15. The fourth charge also suffers from an infirmity. The Municipal Commissioner's proposal to recover certain charges from Shri S.M. Mengane was not accepted by the Standing Committee. This according to the State Government was the abuse of power by the Standing Committee of the Corporation. The Commissioner had recommended that road opening fee of Rs. 6003/- should be levied on Shri Mengane. He also recommended recovery of other charges including compounding fee of Rs. 500/-; but the Standing Committee in its discretion compounded the offence for Rs. 50/- and waived the road opening fee of Rs. 6003/- and reduced the compounding fee from Rs. 500/- to Rs. 50/-. The power to compound offences rests with the Standing Committee and if the Standing Committee orders compounding of any offence, it cannot be said that the Corporation has abused its power. Not accepting the proposal of the Municipal Commissioner when the power is with the Standing Committee to order recovery of certain charges, cannot amount to a default in performing the duty. This is more so when the Corporation had not incurred that much expenditure. The decision was taken by the Standing Committee after obtaining advice from the legal Adviser as well as Municipal Chief Auditor. This charge also cannot be any stretch of imagination fall u/s 452(1) of the Act.

16. The fifth charge appears to be frivolous and ridiculous. It would mean that mere passing of a resolution of any kind recommending concessions in the matter of octroi tax amounts to abuse of power by the Corporation. In this connection it has to be noted that the Corporation has the power to recommend amendments to the Octroi Rules by passing a resolution. These amendments to the Rules are subject to the sanction of the Government. If the Government were of the opinion that this would involve a colossal financial loss to the Corporation, the Government would not sanction such amendments to the Octroi Rules,; but we fail to understand how mere passing of a resolution amounts to abuse of power when the ultimate authority concerned to sanction such amendments to the Octroi Rules is the State Government itself. In our opinion, none of these charges squarely fall within the purview of section 452(1) of the Act and the

show cause notice under the said provisions is liable to be struck down, we feel that if an action is wholly unjustified under law, then no authority has the power to take such action and harass the citizens or the body life the Corporation by issuing notices and asking them to justify their actions and put them into the peril of deprivation of their rights and ask them to face actions like supersession. It was argued by Shri C.J. Sawant, the learned Counsel for the State that the Corporation should file its reply and justify the actions and after considering their explanation the State Government may come to a different conclusion if it is satisfied that these charges are not proved. In our opinion, the Corporation cannot be called upon to do something and justify its actions if the law does not empower issuing of such notices. If such illegalities are brought to the notice of this Court, then in our opinion, it is the duty of the Court to strike down such actions having regard to the facts and circumstances of the case.

17. At this stage it would be worthwhile to note the observations of their Lordships of the Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, which are as under :

"Every wrong action of a municipal committee need not necessarily lead to the inference of incompetence on the part of the committee or amount to an abuse of the powers of the committee. That is a matter to be decided by the State Government on the facts of each case. A committee may admit that what it has done is wrong and yet may plead that its action does not reveal incompetence or an abuse of its powers. It may plead an honest error of judgment, it may plead some misapprehension about the State of facts or State of the law; it may plead that in any event the drastic action contemplated by section 238(1) is not called for. Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed. In fact in the present case one of the complaints of the appellant is that relevant facts were not considered by the Lt. Governor. Neither the impugned order nor the note of Shri Shaiza shows that in regard to the first allegation two vital circumstances were considered: (a) the contractor had agreed to pay interest at the rate of 9 per cent on the mobilisation advance; (b) the contractor had agreed to offer bank guarantee to cover the mobilisation advance as well as the interest. It was argued that had these facts been brought to the notice of the Lt. Governor he might not have made the impugned order. If notice had been given to the Committee, the Committee would have certainly brought these facts to the notice of the Lt. Governor.

18. In the present case the allegations made in the petition are not even denied by the respondents. Shri Rane, the learned Counsel for the petitioner, also relied upon certain actions of the Government and certain circumstances existing to show that the action of the State Government was mala fide. But we do not propose to go into the said question as in our opinion the show-cause notice cannot be sustained under law. However, we may observe that in spite of the serious allegations of mala fides having been made against the State

Government the State Government chose not to file any return or to deny them; but as already observed, it is not necessary to go into this question in the view that we have taken.

19. In the result, therefore, the show-cause notice dated 12-8-1980 is hereby quashed. The petition is, therefore, allowed and the Rule is made absolute with costs.