
(1924) 07 CAL CK 0036
In the Calcutta High Court

Shankar Roy Chowdhury and Another	APPELLANT
Vs	
H.E.A. Cotton and Others	RESPONDENT

Date of Decision : 07-07-1924

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : AIR 1925 Cal 373 : 85 Ind. Cas. 14

Hon'ble Judges : C.C. Ghose, J

Bench : Division Bench

Judgement

C.C. Ghose, J.—This is an application on behalf of the plaintiff for an order that the first defendant the Honourable Mr. Cotton, who is the President of the Bengal Legislative Council, may be restrained from putting a certain Motion, being Item No. 6 in the Printed List of Business, before the Bengal Legislative Council at its Session which commences to-day at 3 P.M., and for an order restraining the second and third defendants, the Honourable Mr. Fazl-ul Huq and the Honourable Mr. Ghuznavi, who are the Ministers, in charge of the Departments of Education and Agriculture of the Government of Bengal from discharging any duties as Ministers, or receiving any payment of salary and for such other or further order as to this Court may seem fit and proper.

2. This application has been brought on immediately after the delivery of my judgment this morning in the matter of the application u/s 45 of the Specific Relief Act on the part of Mr. J. M. Sen Gupta, praying for an order on Mr. Cotton directing him to disallow the said motion. For the reasons given by me I dismissed that application: In Re: Jatindra Mohan Sen Gupta, . But the questions raised on the present application are of such great importance, raising, as it does, difficult questions of constitutional law and procedure which might be carried to the highest tribunal, that it would have been more convenient if I were able to deliver a considered and written judgment. I felt that my decision might have the effect of creating a serious constitutional crisis and that in these circumstances there were two courses open to me (1) that instead of making an

interlocutory order of the description asked for, I should try out the suit in which the present application has been made within 10 days from date, or (2) that this application should be dealt with by me on: Wednesday next, it being understood that whichever course was adopted, the President of the Bengal Legislative Council should stay his hands meanwhile. The learned Advocate-General informed me, however, that arrangements had been made, whatever that might mean, so that the said item No. 6 might be put as the very first item of business before the Legislative Council this afternoon and that it was impossible to interfere with the order of business as it was one which was sanctioned by His Excellency the Governor of Bengal. I was not satisfied that the order of business could not be altered and I accordingly desired the learned Advocate-General to ascertain if it was not possible for His Excellency to give the necessary directions in this behalf, assuming that a matter like this was not within the competence of the President. It is now 2-15 P.M. and I have not been informed as yet of the result of the enquiry that I desired to be made. The matter is of very great urgency and I must therefore proceed to judgment.

3. The facts giving rise to the present application are more or less the same as were raised on the application of Mr. Sen Gupta for a writ of Mandamus. Those facts will be found set out in the judgment which I delivered this morning and it will therefore not be necessary for me to repeat the same again in this judgment. I desire, therefore, that so far as the facts are concerned, my judgment in the case of Mr. Sen Gupta may be read as part of this judgment. This course is rendered all the more necessary because of the shortness of time at my disposal.

4. The substantial point that has been argued before me on the present application is whether, having regard to the provisions of Section 72 D of the Government of India Act and of Rule 94 of the Bengal Legislative Council Rules and Standing Orders", it is competent to the President of the Bengal Legislative Council to put the said item No. 6 before the Bengal Legislative Council at its meeting which takes place this afternoon for the consideration of the members of the Council. Another equally important point which has been the subject of debate before me is that whether on the facts of this case this Court has any jurisdiction to make an order of the description asked for on the President of the Legislative Council. The said item No. 6 runs as follows:

Supplementary demands for Grant.

22.-General Administration (Transferred).

5. The Honourable Mr. J. Donald to move that a sum of Rs. 1,710,00 be granted for expenditure under the head 22-General Administration (Transferred) on account of salaries of the Ministers.

6. The first question that I have got to decide is whether this Court has any jurisdiction to interfere in this matter. Now, the clause of the Government of India Act providing for exemption from the jurisdiction of the High Courts runs as follows:

110-The Governor-General, each Governor, Lieutenant-Governor and Chief Commissioner and each of the members of the Executive Council of the Governor-General or of a Governor or Lieutenant Governor and a Minister appointed under this Act, shall not

(a) be subject to the original jurisdiction of any High Court by reason of anything counselled, ordered or done by any of them in his public capacity only; nor

(b) be liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction; nor

(c) be subject to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony.

7. There is no other provision in the Government of India Act of any rules made thereunder excluding the jurisdiction of the High Courts. The learned Advocate-General has contended that Parliament in passing the Government of India Act and in constituting Legislative Councils there under, has kept in view the English constitutional principle, namely, that the Legislature is supreme and that neither the judiciary nor the executive should interfere in any way with the conduct of business in the Legislative Councils, and that having regard to the provisions of Rule 15 of the Bengal Legislative Council Rules and Standing Orders, the decision of the President of the Legislative Council on a point of order (and it is argued that the point raised in the present application is a point of order) is final and that it is not open to question in a Court of justice. I am perfectly aware of the fact that in England the Legislature is supreme, but what I have to consider on the present application is not whether the English Parliament is supreme, but whether the Bengal Legislative Council, which is a subordinate legislature and a creation of Parliament, is supreme in the sense contended for by the learned Advocate-General and whether the jurisdiction of the High Court, so far as the President of the Legislative Council is concerned, is excluded by statute or judge-made law or by implication. If I have no jurisdiction to entertain this suit, it would be obviously improper for me to express any opinion on the merits of the questions discussed before me, though that discussion was necessary before I could determine the issue as to jurisdiction [cf. *Pritchard v. Mayor, etc., of Bangor* (1888) 13 A.C. 241.] In my view, the question now before me does not really relate to the powers of the local Legislature; but if it did, I have no doubt that it would have been a legitimate subject of discussion in this Court and I am prepared to hold that the proceedings of a subordinate legislature like the local legislature can be questioned in this Court too in this connection the observations of Jenkins, C.J., in *Hari v. Secretary of State* (1903) 27 Bom. 424.] But as I say the substantial question is whether the President of the Council is immune from the jurisdiction of this Court. This Court is a superior Court of Record and prima facie no matter is deemed to be beyond the jurisdiction of this Court, unless it is expressly shown to be so. By the word "jurisdiction" is meant the authority which the Court has to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision.

8. Now, this is a suit of the civil nature and in the CPC it is provided that the Court shall have jurisdiction to try all suits of a civil nature, but from this rule are excepted "suits of which the cognizance is barred by any enactment." As stated above, there is nothing in the Government of India Act to exclude the jurisdiction of this Court. The President of the Bengal Legislative Council is appointed under the provisions of Section 72-C. of the Government of India Act, the present President being a person appointed by His Excellency the Governor. He is the holder of an office created by statute and nothing has been shown to me during the course of the argument, which can remotely suggest that the President of the Bengal, Legislative Council is immune from the jurisdiction of this Court. As was observed by Bailhache, J., adopting the statement of the law by the Attorney-General Sir Richard Webster, if any person, whether an officer of State or a subordinate, has to justify an act alleged to be unlawful by reference to an Act of Parliament of State authority, the legal justification can be enquired into in this Court [See *China Mutual Steam Navigation Co., Ltd. v. Maclay* (1918) 1 KB. 33]. Therefore, in my opinion, a suit can lie against the President of the Bengal Legislative Council.

9. The learned Advocate-General referred to the impolicy of interfering with the discretion vested in the President of the Legislative Council. I have nothing whatsoever to do with questions of policy and as regards interfering with the discretion vested in the Legislative Council, the point raised really begs the whole question.

10. I now proceed to consider the substantial question raised before me on the construction of the provisions of the Government of India Act referred to above and of Rule 94 of the Bengal Legislative Council Rules and Standing Orders, and I think it will be convenient if, at this stage, I set out the material sections of the Government of India Act. The first section to which I need refer is Section 52 of the Act, which runs as follows:

52.-The Governor of a Governor's Province may, by notification, appoint ministers, not being members of his executive council or other officials, to administer "transferred" subjects and any ministers so appointed shall hold office during his pleasure.

There may be paid to any minister so appointed in any province the same salary as is payable to a member of the executive council in that province, unless a smaller salary is provided by vote of the Legislative Council of the province.

No minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.

11. The next section of the Act to which reference may be made is Section 72-C, which runs as follows:

72-C.-There shall be a President of a Governor's Legislative Council, who shall, until the expiration of a period of four years from the first meeting of the council

as constituted under this Act;,, be a person appointed by the Governor, and shall thereafter be a member of the Council elected by the council and approved by the Governor:

Provided that, if at the expiration of such period of four years, the council is in session, the President then in office shall continue) in office until the end of the current (session, and the first election of a President shall take place at the commencement of the next ensuing session.

12. Section 72-D., upon which the controversy has raged, runs as follows:

72-D.-(1) The provisions contained in this section shall have effect with respect to business and procedure in Governor's Legislative Councils.

(2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the council in each year, and the proposals of the local government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the council in the form of demands for grants. The council may assent or refuse its assent, to a demand, or may, reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed:

Provided that -

(a) the local government shall have power, in relation to any such demand, to act as if it had boon assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to "reserved" subject, and the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject; and

(b) The Governor shall have power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department; and

(c) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the Governor, communicated to the Council.

13. Now these provisions relating to the business and procedure in Governors' Legislative Councils mark a great advance in the direction of parliamentary methods, particularly in conceding the right to vote " supplies. There is to be an annual statement of estimated expenditure and revenue and the proposals of the local governments for the appropriation of provincial revenues and other moneys in any year are to be submitted to the vote of the council in the form of demands for grants. The council may assent or refuse its assent to a demand or may reduce the amount demanded either by a reduction of the whole grant or by the omission or reduction of any of its items. A proposal for appropriation of revenue

is not to be made except on the recommendation of the Governor, communicated to the council. The voted "grants" only cover the kind of expenditure which in England is made out of "moneys provided by Parliament." It is also provided in Section 72-D that certain charges of a special or recurring character, which are set out in the section itself, are outside the range of voted "grants." This distinction will be recognised by every student of constitutional history as corresponding roughly to the English distinction between "charges on the votes" and "charges on the Consolidated Fund." So far the procedure is based on English practice; but the executive Government is given exceptional powers of authorising expenditure in case of need. If a demand relates to a Reserved subject and the Governor certifies that the expenditure is essential to the discharge of his responsibility for the subject, the local Government has power in relation to any demand to act as if it has been assented to, notwithstanding the withholding of the assent or the reduction of the amount asked for. The Governor also has power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province or for the carrying on of any department. The provisions of this very important section are left to be worked out in detail by statutory Rules and Standing Orders. The Standing Orders are to supplement the Rules and must not be inconsistent with them. They are to be made in the first instance by the Governor-in-Council, but may be altered by the local Legislative Council with the assent of the Governor.

14. These being provisions of the Government of India Act, to which it is necessary for me to refer for the purposes of this judgment, I now turn to the Rules and Standing Orders made in virtue of the authority conferred by the Act. Elaborate provisions are made in the Rules and Standing Orders for the conduct of business in the Legislative Councils.

15. In rule 14 the limitations on debate are set out and in Rule 15 it is provided that the President: shall decide all points of order, which may arise and that his decision shall be final. It is also provided that any member may at any time submit a point of order for the decision of the President, but in doing so shall confine himself to stating the point.

16. Rule 21 provides that a list of business for the day shall be prepared by the secretary and shall be circulated to all members and that no business not included in the list of business for the day shall be transacted at any meeting without the leave of the President.

17. Rule 37 indicates the procedure to be followed by which motions can be brought forward before the Legislative Council.

18. Rule 38, which has been so often referred to before me, runs as follows:

Except as otherwise provided in the Rules the President shall decide on the admissibility of a motion. The President may disallow any motion when in his opinion it does not comply with the rules or Standing Orders.

19. Rule 39, which is also equally important, runs as follows:

A motion must not raise a question substantially identical with one on which the Council has given a decision in the same session.

20. Rule 70 relates to the moving of Resolutions and power is given by Rule 71 to His Excellency the Governor to disallow any resolution or any part of a resolution.

21. Rule 85 runs as follows:

A statement of estimated annual expenditure and revenue of the province (hereinafter referred to as the budget) shall be presented to the council on such day as the Governor may appoint.

22. Rule 87 runs as follows:

(1) A separate demand shall ordinarily be made in respect of the grant proposed for each department of the Government, provided that the Finance Member may in his discretion include in one demand grants proposed for two or more departments, or make a demand in respect of expenditure, such as Famine Relief and insurance and Interest, which cannot readily be classified under particular departments. Demands affecting reserved and transferred subjects shall, so far as may be possible, be kept distinct.

(2) Each demand shall contain, first, a statement of the total grant proposed, and then a statement of the detailed estimate under each grant, divided into items.

(3) Subject to these rules, the Budget shall be presented in such a form as the Finance Member may consider best fitted for its consideration by the Council.

23. The next Rule to which I need refer is Rule 88, which is in these terms:

The Budget shall be dealt with by the council in two stages, namely:

(1) a general discussion; and

(2) the voting of demands for grant." Rule 89 is in these terms:

(1) On a day to be appointed by the Governor subsequent to the day on which the budget is presented and for such time as the Governor may allot for this purpose the council shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage, nor shall the Budget be submitted to the vote of the Council.

(2) The Finance Member shall have a general right of reply at the end of the discussion.

(3) The President may, if he thinks fit, prescribe a time-limit for speeches.

24. Rule 90 runs in these terms:

Not more than twelve days shall be allotted by the Government for the discussion of the demands of the Local Government for grants.

(2) Of the days so allotted not more than two days shall be allotted by the Governor to the discussion of any one demand. As soon as the maximum limit of time for discussion is reached, the President shall forthwith put every question necessary to dispose of the demand under discussion.

(3) On the last day of the allotted days at 5 o'clock the President shall forthwith put every question necessary to dispose of all the outstanding matters in connection with the demands for grants.

25. The next Rule which I need refer to is Rule 91 which runs as follows:

No motion for appropriation can be made except on the recommendation of the Governor communicated to the Council.

(2) Motions may be moved at this stage to omit or reduce any grant or any item in a grant, but not to increase or alter the destination of a grant.

(3) When several motions relating to the same demand are offered, they shall be discussed in the order in which the heads to which they relate appear in the Budget.

(4) No motions shall be made for the redaction of a grant as a whole until all motions for the omission or reduction of definite) items within that grant have been discussed.

26. Rule 92 runs as follows:

If the local Government or the Governor exercises the power conferred by Section 72-D (2) provisos (a) and (b), of the Government of India Act in regard to demands refused or reduced by the Council, the Finance Member shall, as soon as may be thereafter, lay on the table of the Council a statement showing the action u/s 72-D, (i) proviso (a) with a copy of the certificate granted by the Governor, but no motion may be made in regard to that action.

27. Rule 93 runs as follows:

When money has been spent on any service for which the vote of council is necessary during any financial year in excess of the amount granted for the service and for that year, a demand for the excess shall be presented to the council by the Finance Member, and shall be dealt with in the same way by the council as if it were a demand for a grant.

28. Rule 94 is in these terms:

(1) An estimate shall be presented to Council for a supplementary or additional grant when...

(i) the amount voted in the budget of a grant is found to be insufficient for the

purposes of the current year; or

(ii) a need arises during the current year for expenditure for which the vote of Council is necessary upon some new service not contemplated in the budget for that year.

(2) Supplementary or additional estimates shall be dealt with in the same way by the Council as if they were demands for grants.

29. The real controversy has raged round the provisions of Rule 94 which I have just set out, taken along with the provisions of Section 72-D of the Government of India Act. It is contended having regard to the facts which are set out in my judgment in the matter of the application of Mr. Sen Gupta, that it is not competent to Mr. Cotton to include in the agenda the motion which stands in the name of the Hon^{ble} Mr. Donald. The argument is put in this way: It is contended, that before the financial year commences, a statement of the estimated annual expenditure and revenue of the province has got to be placed before the Legislative Council, that is to say one statement of the estimated annual revenue and expenditure, commonly called the " Budget" has got to be placed before the Legislative Council. The provisions in the Budget relating to the appropriation of revenues and other moneys must be submitted to the vote of the Council in the form of demands for grant. A particular demand for a grant of salaries of the Ministers having been once rejected, by the Legislative Council at its meeting held on the 24th March, 1924, it is argued that it is not now competent to the Government to put forward a fresh demand for the grant of salaries to ministers, unless that demand can be brought within the four corners of Rule 94 of the Bengal Legislative Council Bales and Standing Orders. It is also pointed out that having regard to the plain and unequivocal language of Rule 94, the supplementary demand for grant of salaries to Ministers, in respect of which Mr. Cotton has admitted Mr. Donald's motion, can never be included within the category of demands referred to in Rule 94 and that this Court, therefore, has undoubted jurisdiction to prevent the President of the Bengal Legislative Council from allowing such a demand to be put before the Council.

30. I have already indicated that in addition to Mr. Cotton there are two other defendants in this suit, namely, the two Ministers. As regards the Ministers, I desire to say at once that I am not satisfied on the grounds which have been urged before me that so far as this application is concerned there is any reason for asking for any order against the Ministers at this stage. I must, therefore, dismiss the present application, so far as the Ministers are concerned.

31. On behalf of the Hon^{ble} Mr. Cotton, I have heard an elaborate address by the learned Advocate-General and he has submitted the following propositions for my consideration:

(a) That in disposing of the present application against Mr. Cotton I should follow the same principles as were followed by me in the application for the Writ of Mandamus.

(b) That the present plaintiffs have not been able to satisfy the Court that they have made any demand whatsoever on Mr. Cotton and that Mr. Cotton has distinctly determined to refuse the demand of the plaintiffs.

(c) That the plaintiffs have failed to satisfy the Court that they have any interest whatsoever in this matter which is likely to be injured by Mr. Cotton putting Mr. Donald's motion before the Bengal Legislative Council this afternoon.

(d) That the President of the Bengal Legislative Council has under the Rules complete discretion in the matter and that having regard to the provisions made in the Rules and Standing Orders for points of order being raised by members of the Council and having regard to the express provisions of Rule 15, this Court will not interfere with the President in the discharge of his duties.

(e) That there is nothing whatsoever in the Government of India Act or in the Legislative Council Rules and Standing Orders to prevent a motion for appropriation of provincial revenues for a particular object being made at any time before the Legislative Council, provided it is in compliance with the provisions of Rule 39.

32. The learned Advocate General in concluding his observations pointedly drew my attention to Section 52 of the Government of India Act and contended that having regard to the events that had happened, namely, the total refusal of the salaries of the Ministers at the meeting of the Bengal Legislative Council held on the 24th March, it was competent to His Excellency the Governor to direct that there should be paid to the Ministers whose salaries had been refused by the Legislative Council, the same salaries as were payable to the members of His Excellency's Executive Council and that it was not really necessary to bring forward again any demand for grant of salaries to the Ministers and that if His Excellency has given directions for a motion for appropriation of revenues to be brought forward in the manner indicated in item 6 in the agenda, it was because His Excellency desired to do every courtesy to the members of the Bengal Legislative Council and because and as constitutional ruler he was anxious to give the members of the Legislative Council a further opportunity to consider the matter.

33. With reference to these last observations of the learned Advocate-General, I desire to say at once that the question he has indicated is not before the Court at the present moment and I refuse to pronounce any opinion on the legality or otherwise of the action which may be taken to pay the Ministers whose salaries had been refused by the Legislative Council the same salaries as are payable to the members of His Excellency's Executive Council. It is not my province, nor is it my remotest desire, sitting here in this Court, to refer to any action that has been taken or that may be taken by His Excellency the Governor of Bengal. I am not concerned with any discussion about His Excellency's acts and I must enter my protest against any reference being made in my Court to the same.

34. I now proceed to consider Mr. Advocate-General's arguments, and in

considering them I shall first take up for discussion his argument under head (e). I am wholly unable to accede to the learned Advocate-General's argument that a proposal for appropriation of provincial revenues can be made at any time before the Legislative Council. The principle underlying Section 72-D of the Government of India Act is, as I understand, as follows:

35. A figure in an estimate once passed by the Legislative Council cannot be altered except as provided by the statutory rules. If, therefore, Government subsequently find that any item has been inadvertently omitted from the demands for grants, or that demands which could not be foreseen at the time of presenting the Budget have since arisen or that the provision made for any item is likely to prove insufficient, the same formality has to be gone through as in the case of the original demands and Government has to make a fresh demand known as a supplementary or additional demand and submit a fresh estimate to the Legislative Council. That such should be the case is only natural, considering the fact that the original estimates are framed from 6 to 8 months in advance of the actual occurrence of the facts and the nature of the charges for which provision has to be made is so vast and varied. As Col. Durell points out in his book on Parliamentary Grants, Chapter 1, Page 49, " It is a sound principle, that one, and only one, estimate of national expenditure should be laid before Parliament during each session; for to render Parliamentary control effectual, it is necessary that the House of Commons should have the money transactions of the year presented to it in one mass and in one account." Supplementary estimates are always looked upon with particular jealousy by popular legislature because they tend to diminish the control of the legislature, and if for large sums, really amount to a breach of contract between the Government and the legislature. (If authority is needed for the statement as a matter of constitutional practice, reference may be made to the speech made by Mr. Austin Chamberlain in the House of Commons in August, 1921, where he described supplementary estimates as the weak joint in the armour of any Government).

36. The Advocate-General lays very great Stress upon the provisions of Rule 39. Now this Rule 39 is taken from the Rules and Standing Orders of the House of Commons and if Mr. Advocate-General's contention was correct, then there would be nothing to prevent a coach and four being driven, to use the words of Lord Justice Bowen; through this Act of Parliament. And in my opinion it is because the framers of the Rules and Standing Orders under the Government of India Act desired to follow with scrupulous care the English Parliamentary practice as regards the Budget Heads of Expenditure and Revenue and the demands for grants or supplies that they did not omit to insert in the said Rules and Orders a provision for Supplementary or Additional grants. This provision is to be found in Rule 94, and therefore, the conclusion is irresistible that save and except what is provided for in Section 72-D of the Government of India Act and Rule 94 of the Rules and Standing Orders, there cannot be made any demand for grant even if His Excellency the Governor makes a recommendation for appropriation of provincial revenues on occasions not provided for in the said

section and the said Rule. The learned Advocate-General drew my attention to the Report of the Joint Committee of the House of Parliament on Mr. Montagu's Bill. My duty sitting here to-day is to construe the provisions of the Act; but since the matter has been raised I desire to observe that I am very familiar with the whole of the literature on the subject of the Government of India Act including the Report of the Joint Committee and I say that there is no warrant to be found anywhere for the proposition which has been strenuously maintained by the learned Advocate-General. The authorities on this question of constitutional practice, such as Sir Courtenay Ilbert, Sir Erskine May and Lord Courtenay, are all against the view contended for by Mr. Advocate-General, and I do not, therefore, propose to pursue the matter any further.

37. I now take up for consideration Mr. Advocate General's contention under head (d). If I am correct in the view which I have taken, namely, that Mr. Donald's motion for a supplementary grant is in the circumstances of the present case entirely opposed to the provisions of the Statute (see the provisions of Rule 94 of the Rules and Standing Orders) then it follows that the President of the Council, who is required to conduct the business of the Council in accordance with the provisions of the law in that behalf, is not competent to allow any facilities to Mr. Donald to bring forward such a motion. In other words, Mr. Cotton has no jurisdiction to admit Mr. Donald's motion under the provisions of the Government of India Act and under the provisions of the Rules and Standing Orders. Mr. Advocate-General has strongly relied upon the provisions of Rule 15. Rule 15, in my opinion, does not exclude the jurisdiction of this Court. It is a rule by which the Members of the Bengal Legislative Council are bound, and as I read the Rule, it means nothing more or less than this that when the President has given his decision on a point of order, his decision is final, so far as the Members of the Council are concerned, and that it cannot be questioned by anybody within the Council. If anybody within the Council questions the President's decision on a point of Order, the President's powers are ample and he knows how to enforce his decision. The presence of the word "Final" in Rule 15 does not, as I have said above, exclude the jurisdiction of this Court, nor does it conclude the matter. It is a word which is to be found in numerous statutes; sometimes it has been held with reference to the context in which it appears that the word "Final" means final for all purposes, and excludes the jurisdiction of the Courts; sometimes it has been held that notwithstanding the existence of the word "Final" the jurisdiction of the Courts is not excluded. There are numerous decisions on this point, and if time permitted, I could give illustrations from a long catena of cases decided in this Court. Mr. Advocate-General refers to the affidavit which has been put in by Mr. Cotton and asks me not to interfere with the President in the discharge of his duties. By instinct and training I am opposed to any interference with the President of a Legislative Body in the discharge of his duties but it seems to me in this case that Mr. Cotton has had abundant opportunities of deciding on the legality or otherwise of Mr. Donald's motion, and he has not chosen to tell me through the mouth of his Counsel what his decision

is. If the matter rested purely on the discretion of the President, it is clear that the Court would hesitate to interfere although in England it has been held that if there is an outrageous exercise of discretion by a public officer, the Court will not hesitate to interfere. In my opinion, however, no question of discretion arises in this case; the law is clear; and Mr. Advocate-General has been forced to admit that Mr. Donald's motion is wholly inadmissible under Rule 94 of the Rules and Orders. But Mr. Advocate-General tries to get out of the difficulty by suggesting that Rule 94 requires an estimate" and that inasmuch as no "estimate" within the meaning of Rule 94, has been presented before the Bengal Legislative Council, Mr. Donald's motion is therefore not hit by Rule 94 of the Rules and Orders. In parenthesis I may observe that Mr. Advocate-General stated that no estimate has been presented under Rule 94, because the "estimate" had been presented on a previous occasion, namely, at the meeting of the Legislative Council held in March last. There is really no substance in this. The estimate," such as it was, presented at a different Session of the Council; the Session which is about to commence today is a new Session, and this in itself is a sufficient answer. But I do not propose to pause here. Mr. Donald's motion is headed by the framer with an eye to its inclusion under Rule 94, and I cannot allow the consideration of this very important question to be obscured by a reference to the want or otherwise of an "estimate", To do so would really amount to juggle with the Act, if I may be allowed to use the expression. I now proceed to discuss Mr. Advocate-General's points under heads (b) and (c). This is a representative suit instituted by the present plaintiffs. Leave under O.1, Rule 8, C.P.C., has been given to the plaintiffs to sue on behalf of themselves and all others who pay Government revenue or pay taxes. The "interest" which Mr. San Gupta in his application failed to show, is in the present plaintiffs and it is sufficient to sustain them to maintain this suit [see in this connection the judgment of Tyabji and Parsons, JJ. in the case of Vaman v. Municipality of Sholapur (1897) 22 Bom. 646]. The present plaintiffs have, in my opinion, made a sufficient demand on Mr. Cotton; Mr. Cotton would not be here through his Counsel before me if a demand had not been made, and I am satisfied on the contentions raised on behalf of, Mr. Cotton that he has refused to comply with the demand. As I have already said in the other judgment, it is not necessary to use the word "refuse" or any equivalent to it; refusal may be inferred from conduct, and on the facts of this case, I think the plaintiffs are not wrong when they say that there has been a refusal on the part of Mr. Cotton. That being so, it is necessary to consider whether the plaintiffs would be injured by Mr. Cotton, putting the motion, being item No. 6 in the agenda, before the Bengal Legislative Council, at its meeting this afternoon and secondly, what is the extent of the imminence of danger which will induce the Court to make an order in favour of the present plaintiffs. The present action is what in England would be described as in the nature of a Quia Timet Bill. It is a Very old head of Equity Jurisdiction and according to Story, it has been traced back to so early a period as the reign of Edward IV. These Quia Timet Bills are in the nature of Writs of prevention, to accomplish the ends of precautionary justice and are ordinarily applied to prevent wrongs or anticipated

mischiefs and not merely to redress them when done. There are two necessary ingredients for a Quia Timet action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proved that the apprehended damage will, if it comes, be very substantial and irreparable, i.e., it must be shown that if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it, if relief is denied to him in a Quia Timet action (see in this connection *Fletcher v. Bealey* (1885) 28 Ch.D. 688. The power is entirely discretionary: it is a large power and I have ever present in my mind Lord Mansfield's caution that the greater the power, the more cautious must be the exercise of it. Time is pressing and I am unable to develop all the points which are passing through my mind, because Mr. Advocate-General has desired an immediate decision. I must say, however, this that on both heads, the plaintiffs have been able to satisfy me that this is a fit and proper case for the exercise of my discretion. There can be no doubt of the imminence of danger having regard to the conclusions at which I have already arrived. That there will be substantial damage and irreparable, within the meaning of the Rule laid down above, it is impossible to doubt. No doubt there is the possibility of the motion being not accepted, but there is also the possibility of the motion being accepted by the Council. In these circumstances, when the various considerations are so balanced and when the motion itself is in complete violation of the spirit and letter of the Government of India Act and of the Rules made thereunder, it is my obvious duty to protect the plaintiffs by a temporary order till the suit is heard. In these matters the Court, in the exercise of its discretion, is under an obligation to take large and liberal views, so that the rights of the subject may be preserved and the constitution as laid down by the Government of India Act safeguarded by such means as are in the power of the Court. The right to vote supplies is perhaps the greatest privilege accorded to a legislative body and any infraction of the Rules and Regulations guarding the provision as to the voting of supplies is an "injury" which the plaintiffs in a representative suit, are entitled to be protected from. The Advocate-General has reminded me that it is open to the Legislative Council to flout my order. This is a region of controversy into which I will not enter; the occasion has not arisen for me to consider this question; it may never arise, and speaking for myself, it will never arise. Therefore, so far as Mr. Advocate-General's points under heads (b) and (c) are concerned, I am against him and I am in favour of the plaintiffs.

38. There now remains for me to consider Mr. Advocate-General's point under head (a), namely, that in disposing of the present application I should follow the same principles as were followed by me in the application for the Writ of Mandamus. I have read and re-read, during the last two days, the case to which Mr. Advocate-General has drawn my attention, namely, the case of *Bank of Bombay v. Suleman* (1918) 32 Bom. 466. To a certain extent the contention is correct so far as it goes; but I am by no means prepared to say that in disposing of an application for an injunction, my powers sitting here on this side of the

Court are wholly circumscribed by the rules laid down in Section 45 of Specific Relief Act. I have given to this matter my very best and most anxious consideration within the time at my disposal, and I have come to the conclusion that the plaintiffs having made out a prima facie case I really have no other alternative but to make an order restraining Mr. Cotton, the President of the Bengal Legislative Council, within which expression are included the persons mentioned in page 238 of the Bengal Legislative Council Rules and Standing Orders, from putting the said item No. 6 before the Council for its consideration until the final determination of this suit. The costs of this application, so far Mr. Cotton is concerned will be costs in the cause. So far as the Ministers are concerned the application will stand dismissed with costs.

39. I have now discharged my duties as Judge; but perhaps in view of the public importance of this case, I may venture on one observation; I do not disguise from myself that it is a serious thing to have to interfere with the President in the discharge of his duties. But the law, as I conceive it to be, requires my interference. In my opinion, the Rules and Standing Orders require revision in the light of the events which have happened. I express no opinion on the political situation brought about in March last but I only desire to express the hope that the constitution will be placed on a firm and enduring foundation.