HIGH COURT OF GUJARAT *(D.B.)*

HASMUKHBHAI DHANJIBHAI ZAVERI
V/S
R PARTHASARATHY

Date of Decision: 05 March 1970

Citation: 1970 LawSuit(Guj) 22

Hon'ble Judges: P N Bhagwati, P D Desai

Eq. Citations: 1971 GLR 128, 1971 (7) GLT 146

Case Type: Special Civil Application

Case No: 1504 of 1969

Head Note:

Bombay Provincial Municipal Corporations Act(LIX of 1949) - S.258 - Exercise of power under S.258 Question of judicial spirit - Principle of natural justice must be taken in to consideration - If order is administrative, it must be in consonance of the principles of natural justice - The original order made in breach of rules of natural justice is passed.

The power conferred upon the Municipal Commissioner under sec. 258 of the Bombay Provincial Municipal Corporations Act is a quasi-judicial power and before cancelling a permission in exercise of the power conferred upon him under the said section the Municipal Commissioner should consider the question arising before him in a judicial spirit. In exercising the power the Municipal Commissioner must act justly and fairly and not arbitrarily or capriciously; he must exercise the power in consonance with principles of natural justice. The minimum compliance with the principles of natural justice that is required of the municipal Commissioner before taking action under the section indicated. (Para 18)When an authority seeks to revoke or modify a right which has already been

conferred it is ordinarily presumed that the authority exercising the power must act in a judicial spirit. When an order is made under sec. 258 the Court should adopt a presumption that prior notice and opportunity to be heard should be given before taking action under the section. (Para 16)The jurisdiction of the Municipal Commissioner to cancel the building permission under sec. 258 of the Act arises only if the permission was granted in consequence of material misrepresentation or fraudulent statement. The relevant satisfaction is a jurisdictional fact on the existence of which alone the power may be exercised. A superior authority if any or the High Court in a writ petition would therefore be entitled to consider whether there was due satisfaction by the Municipal Commissioner on the materials placed before him and whether the order was or not made arbitrarily capriciously or perversely. (para 17)Even if the proceeding under sec. 258 of the Act is considered as an administrative proceeding the duty to act in consonance of the principles of natural justice will yet be present because an authority exercising an administrative power is as much required to act justly and fairly and not arbitrarily and capriciously as an authority exercising quasi judicial or judicial power. Even if an order is administrative and not quasi judicial the order has still to be made in a manner consonant with the rules of natural justice when it affects a persons right to property. (Para 19)The vice that attaches to an order passed in contravention of rules of natural . justice cannot be cured ex post facto by affording to the person affected thereby an opportunity to represent his case after the order is passed. An order made in breach of the principles of natural justice is void and an opportunity given to the affected person to represent his case after such an order is made cannot have the effect of resuscitating a stillborn order. The fatal defect in the proceeding may be cured only if the authority passing the order realising that it had acted hastily and arbitrarily annuls its decision proceeds to reconsider the whole matter afresh after affording to the person affected a reasonable opportunity to represent his case and arrives at a fresh decision. (Para 21)The consideration whether miscarriage of justice has in fact resulted or not 1s wholly irrelevant in judging the validity of an order passed in violation of the rules of natural justice. The breach of natural justice is itself miscarriage of justice which entitles the applicant to succeed. (Para 22)Province of Bombay v. Kusaldas S. Advani & ors. Puntabpore Co. Ltd. v. Cape Commissioner of Bihar & ors. Shauqun Singh & ors. v. Desa Singh & ors. X. K. Kraipak & ors. v. Union of India & ors. D.F.O. South Kheri v. Ram Sanehi SinghBoard of High School and Intermediate Education U. P. & ors. v.Kumari Chitra Srivastava & ors. referred to.

Acts Referred:

Bombay Provincial Municipal Corporation Act, 1949 Sec 258

Final Decision: Petition allowed

Advocates: R P Bhatt, H M Bhagat, Ambubhai & Diwanji,K S Nanavati, M Nanavati

Reference Cases:

Cases Cited in (+): **5**

Cases Referred in (+): **4**

Judgement Text:-

P D Desai, J

[1] This petition is directed against an order dated October 13, 1969, passed by the Municipal Commissioner of Baroda, who is the first respondent herein, under sec. 258 of the Bombay Provincial Municipal Corporations Act, 1949, hereinafter referred to as the Act.

[2] The first petitioner is the owner of a piece or parcel of land bearing survey No. 563, TikaNo. C7/5 situate in Sayajiganj area of the city of Baroda. By an agreement of sale dated December 8, 1968, the first petitioner agreed to sell the said land to one Kundanlal Chandulal Zaveri and others carrying on business in the name and style of M/s. Zaveri Brothers. Subsequently, by an agreement of sale dated March 31, 1969, the said Kundanlal Chandulal Zaveri and others, as Partners of M/s, Zaveri Brothers, and the first petitioner as a confirming party, agreed to sell the said land to petitioners Nos. 2 and 3 for and on behalf of petitioner No. 4.

[3] It appears that the petitioners desired to erect a building upon the land in question. The first petitioner, therefore, made an application dated April 1, 1969, to the then Municipal Commissioner of Baroda under ice. 253 of the Act, giving notice of his intention to erect a building consisting of a basement, shopping area, offices, restaurant and residential tenements. Necessary plans, maps, documents etc., required to be furnished under the relevant bye-laws of the second respondent Municipal Corporation were annexed to the application. On May 16, 1969, a meeting was held at which the

then Municipal Commissioner, the Town Development Officer, petitioners Nos. 1 to 3 and their Architect were present. At the said meeting, the plans submitted by the first petitioner for the construction of the proposed building were discussed and certain objections in regard to the plans were pointed out to the three petitioners. On June 20, 1969, fresh plans were submitted to the then Municipal Commissioner and, according to the respondents, the Architect of the first petitioner had assured the then Municipal Commissioner that the plans were revised to comply with all the objections raised at the earlier meeting and that the plans were in accordance with the rules and the bye-laws. On June 21, 1969, building permission was issued to the first petitioner who was authorised to proceed with the construction of the building in accordance with the fresh submitted by him.

[4] It is the case of the petitioners that the petitioners proceeded with the construction of the building on or about June 23, 1969, and by the time the present petition was filed on November 15, 1969, the petitioners had constructed nearly 23rd of the plinth of the proposed building and also completed construction work on the ground floor and finished the work of putting up loft slabs of the proposed building. According to the petitioners, a sum of Rs. 1,25,000/- has already been expended on the construction of said building.

[5] On October 14, 1969, the first petitioner was served with an order dated October 13, 1969, issued by the first respondent purporting to be an order made under sec. 258 of the Act. The order stated that the first respondent was fully satisfied, on careful scrutiny of the facts contained in the notice given and the information furnished by the first petitioner under sec. 253 of the Act, that certain material misrepresentations and fraudulent statements were made by the first petitioner. By the said order, the first respondent cancelled the permission earlier granted to the first petitioner to proceed with the erection of the building on his land survey No. 563 in exercise of the powers conferred upon him by sec. 258 of the Act.

[6] The order does not set out what were the material misrepresentations and fraudulent statements allegedly made by the first petitioner in the notice served or information furnished by him under sec. 253 of the Act; nor does the order show ex facie what was the material on which reliance was placed by the first respondent and what were the reasons which weighed with the first respondent in arriving at the satisfaction about the alleged misrepresentations and fraudulent statements. Petitioner No. 1, therefore, addressed a letter dated October, 21, 1969, to the first respondent requesting him to

furnish particulars of the alleged misrepresentations so that the same could be discussed and rectified. The first petitioner also requested the first respondent to give him an opportunity to discuss the matter personally and to state his case. The first respondent, by his reply dated October 24, 1969, directed the first petitioner to have a preliminary discussion with the Town Planner in the matter.

[7] A meeting between petitioners Nos. 1 and 2 on one hand and the Town Planner on the other appears to have been held on October 27, 1969. The Town Planner appears to have pointed out to petitioners Nos. 1 and 2 the objections as well as the alleged misleading and fraudulent statements which were made by the first petitioner in the notice given and information furnished by him under sec. 253 of the Act. The Town Planner asked petitioners Nos. 1 and 2 to give an explanation and it is the case of the petitioners that their stand in the matter was orally clarificant the said meeting. Ultimately, the first petitioner received the letter dated November 5, 1969, from the Town Planner requesting him to submit fresh plans in respect of the building proposed to be erected on his land for complying with the bye-laws and regulations of the second respondent Municipal Corporation.

[8] The petitioners have thereupon approached this Court praying that an appropriate writ or direction be issued quashing and setting aside the order dated October, 13, 1969, passed by the first respondent under sec. 258 of the Act and directing the respondents to forbear from obstructing the petitioners from carrying on the construction work in accordance with the building permission already granted by the first respondent.

[9] The impugned order is assailed on behalf of the petitioners on several grounds. It is, however not necessary to refer to and deal with all the grounds because the impugned order is liable to be quashed and set aside on one ground alone. The ground which is fatal to the validity of the order is that it is passed in utter disregard of the principles of natural justice and that the first respondent had failed to afford to the petitioners a reasonable opportunity of representing their case against the order proposed to be made before passing the impugned order.

[10] Counsel for the petitioners urged that the proceeding before the Municipal Commissioner under sec. 258 of the Act is a quasi judicial proceeding and the Municipal Commissioner could not have passed the impuged order without affording a reasonable opportunity to the petitioners to represent their case before the order was passed. In the alternative, it was urged that even if the proceeding in question is considered as an administrative proceeding, an order made in the proceeding involves civil consequences

and, therefore, the proceeding has to be conducted in conformity with rules of natural justice. According to the learned counsel, therefore, in either view of the matter, the order passed by the first respondent cannot be sustained because it was passed in utter disregard of the essential principles of natural justice.

[11] Before we consider the submissions made by the learned counsel, it may be convenient to refer to the relevant sections of the Act. Sec. 253 of the Act, which provides for a notice to be given to the Municipal Commissioner of the intention to erect a building, reads as under :

> "Sec. 253 : (1) Every person who shall intend to erect a building shall give to the Commissioner notice of his said intention in the form prescribed in the bye-laws and containing all such information as may be required to be furnished under the bye-laws.
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> (2) Every such notice shall be signed in the manner prescribed in the bye-laws and shall be accompanied by such documents and plans as may be prescribed.
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> Sec. 258 of the Act, which confers power upon the Municipal Commissioner to cancel the permission to erect a building on certain grounds, reads as under :-
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> "Sec. 258 If at any time after permission to proceed with any building or work has been given under the rules, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under sec. 253 or 254 of or further information if any, furnished, he may cancel such permission, and any work done thereunder shall be deemed to have been done without his permission."
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> Sec. 478 of the Act, which deals with unauthorised works, reads as under :-
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> "Sec. 478 "(1) If any work or thing requiring the written permission of the Commissioner under any provision of this Act or any rule, regulation or bye-

law is done by any person without obtaining such written permission or if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to be unauthorised and, subject to any other provision of this Act, the Commissioner may at any time, by written notice, require that the same shall be removed, pulled down or undone, as the case may be, by the person so carrying out or doing. If the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisitions of the Commissioner.

(2) If within the period specified in such written notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner, as the case may be."

[12] It is not in dispute before us that the impugned order is passed under sec. 258 of the Act. It is like wise not in dispute before us that the impugned order was passed without giving prior notice to the petitioners or any of them of the particulars of the alleged misrepresentation or fraud and without affording to the petitioners a reasonable opportunity of bringing forward evidence to correct or controvert the charge levelled against them and to otherwise state or explain their case. We shall have to consider the submissions made before us in light of this admitted position.

[13] On the submissions made by the learned counsel for the petitioners, the first question which arises for our consideration is whether the proceeding before the Municipal Commissioner under sec. 258 of the Act, which empowers the Municipal Commissioner to cancel the permission to proceed with the erection of any building or work granted by him, on his being satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement made by the applicant, is a quasi judicial proceeding. In Province of Bombay v. Kusaldas S. Advani and others (1950) SCR 621 at page 725, Das. J. formulated the following tests to find out whether a particular act is an administrative act or a quasi judicial act:

(i) that if a statute empowers an authority, not being a Court in the ordinary

sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and In the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi judicial act and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi judicial act provided the authority is required by the statute to act judicially. The present case falls within the second category or class of cases indicated by Das J,

[14] It is clear on a bare reading of sec. 258 of the Act that it does not expressly cast a duty upon the Municipal Commissioner to act judicially. However, it is now well settled that the duty to act judicially is not required to be super-added or superimposed by the statute. Such a duty may be inferred from or spelt out of the nature of the power conferred upon the authority. If the nature of the power is such that it empowers the authority to determine questions which affect an individual prejudicially, judicial character of duty has to be inferred from the very nature of power conferred upon the authority. We will, therefore, have to examine Secs. 253 and 258 of the Act in order to find out what would be the effect of an order made by the Municipal Commissioner granting permission to proceed with the erection of any building or work for which notice has been given under sec. 253 of the Act and what would be the effect of the cancellation of such permission in pursuance of an order made under sec. 258 of the Act.

[15] Under sec. 253 of the Act, every person intending to erect a building is required to give to the Municipal Commissioner notice of his intention in the form prescribed in the bye-laws and is also required to furnish such documents and plans as may be required to be given under the bye-laws. The Municipal Commissioner may or may not give the permission or may give the permission after requiring the applicant to suitably modify or alter the plans submitted by him so that they may conform to the bye-laws framed by the Municipal authorities. The proceeding at this stage may or may not be quasi judicial and

we are not called upon to decide that question in the present proceedings. But once the permission to erect a building is granted by the Municipal Commissioner, the person to whom the permission is granted becomes entitled to construct a building in accordance with the plans sanctioned and the building permission granted by the Municipal Commissioner. Sec. 258 of the Act, in so far as it is relevant, confers upon the Municipal Commissioner the power to cancel such permission on being satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under sec. 253 of the Act and, upon the cancellation of such permission, any work thereunder shall be deemed to have been done without his permission. On a plain reading of the section, it is clear that the power to cancel the permission can be exercised by the Municipal Commissioner at any stage after the building permission has been granted and even after the work of erecting the building has already been commenced. In the present case, as alleged by the petitioners, the Municipal Commissioner has exercised the power long after the work of erection of the building had been commenced and after the petitioners had expended a sum of Rs. 1,25,000/- on the construction of the building. Sec. 478 of the Act provides for the consequences which ensue in a case where any work required to be done with the written permission of the Municipal Commissioner under any provisions of the Act is done without obtaining such permission or a case where such permission is subsequently suspended or revoked for any reason by the Municipal Commissioner. The section provides that the Commissioner may, by written notice, in such cases require that such unauthorised construction be removed, pulled down or undone and where the requisition contained in the notice is not carried out, the section authorises the Municipal Commissioner to remove or undo the unauthorised structure at the expenses of the owner.

[16] It is thus clear that the exercise of the power under sec. 258 of the Act is bound to prejudicially affect any person against whom an action under the said section is taken. There is hardly any doubt that the cancellation of the permission would have serious repercussions on an individual's right to property and is bound to affect his interest adversely. Moreover, the cancellation of the permission by the Municipal Commissioner in exercise of his power under sec. 258 of the Act has the effect of taking away the right to construct a building in accordance with the sanctioned plans which has already been conferred upon the person who has given notice of his intention to erect a building under sec. 253 of the Act. When an authority seeks to revoke or modify a right which has already been conferred, it is ordinarily presumed that the authority exercising the power must act in a judicial spirit. An order under sec. 258 of the Act is similar to an

order revoking or modifying a licence and it is well settled that in such cases, the Court should adopt a presumption that prior notice and opportunity to be heard should be given before a licence can be revoked (vide Judicial Review of Administrative Action (Second Edition) by S.A. De Smith at page 211, approvingly cited in Puntabpore Co. Ltd. v. Cane Commissioner of Bihar and others 1969(1) Supreme Court Cases 308).

[17] Again, under sec. 258 of the Act, the Municipal Commissioner has the power to cancel the permission if he is satisfied that the permission to erect a building was granted in consequence of any material misrepresentation or fraudulent statement. By the use of the expression "is satisfied", the Municipal Commissioner is not made the final arbiter of the facts on which the conclusion is reached. The jurisdiction of the Municipal Commissioner arises only if a building permission was granted in consequence of any material misrepresentation or fraudulent statement. The relevant satisfaction is a jurisdictional fact on the existence of which alone the power may be exercised. A superior authority, if any, or the High Court in a writ petition would, therefore, be entitled to consider whether there was due satisfaction by the Municipal Commissioner on materials placed before him and whether the order was or was not made arbitrarily, capriciously or perversely. The power is, therefore, clearly quasi judicial. In this view which we are taking, we are fortified by decision of the Supreme Court in Shauqun Singh & others v. Desa Singh A others Civil Appeal No. 155 of 1967 decided on 4th December, 1969, where, in dealing with sec. 14(2) of the Displaced persons (Compensation for Rehabilitation) Act 44 of 1954, which is in pan materia with sec. 258 of the Act, the Supreme Court has made similar observations.

[18] We are, therefore, of the opinion that both from the point of view of the language employed by the Legislature as well as of the consequences which ensue from an order under sec. 258 of the Act, it is clear that the power conferred upon the Municipal Commissioner under sec. 258 of the Act is a quasi judicial power and before cancelling a permission in exercise of the power conferred upon him under the said section, the Municipal Commissioner should consider the question arising before him in a judicial spirit. In exercising the power, the Municipal Commissioner must act justly and fairly and not arbitrarily or capriciously; he must exercise the power in consonance with principles of natural justice. We are also of the opinion that when the Municipal Commissioner proposes to take an action under the said section, the minimum compliance with the rules of natural justice that is required of him would be that : (i) the particulars of the alleged material misrepresentation or fraudulent statement attributed to the person likely to be affected by the order should be clearly and precisely communicated to him; (ii) the

person likely to be affected should be communicated the material on the basis of which the material misrepresentation or fraudulent statement is imputed to him and such material should not be confined only to the evidence led before the Municipal Commissioner himself but should also cover the material gathered at the fact finding inquiry which may have been conducted by any other appropriate officer as also the report, if any, submitted by such officer to the Municipal Commissioner on the basis of which he proposes to take action and (iii) the person likely to be affected should be given a fair and reasonable opportunity to explain his case and to correct or controvert any statement prejudicial to him with a view to absolving himself of the charge levelled against him.

[19] In view of our finding that the proceeding, which resulted in the making of the impugned order, was a quasi judicial proceeding, it is not really necessary to deal with the alternative submission of the learned counsel for the petitioners and to decide whether the impugned order could have been validity made if the proceeding under sec. 258 of the Act were held to be an administrative proceeding. We may, however, observe that even if the proceeding under sec. 258 of the Act was to be considered as an administrative proceeding, the duty to act in consonance with the principles of natural justice will yet be present. As pointed out by the Supreme Court in A. K. Kraipak and other v. Union of India and others 1969 (2) Supreme Court Cases 262 at page 269:

> "In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their function in a fair and just manner. The requirement of acting juricially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision."'
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> It cannot, therefore, be disputed that an authority exercising an administrative power is as much required to act justly and fairly and not arbitrarily and capriciously as an authority exercising quasi judicial or judicial power. Moreover, it is well-settled that even if an order is administrative and not quasi judicial, the order has still to be made in a manner consonant with the rules of natural justice when it affects a person's right to property (Vide decision of the Supreme Court in D. F. O. South Kheri v. Ram Sanehi Singh,

Civil Appeal No. 1638 of 1969 decided on 15th January, 1970). As we have stated earlier, an order made under sec. 258 of the Act involves serious civil consequences prejudicially affecting a citizen's right to property. In any view of the matter, therefore, the Municipal Commissioner exercising power under sec. 258 of the Act is bound to comply with the principles of natural justice and to afford a reasonable opportunity of representing his case in the manner indicated hereinabove to a person likely to be prejudicially affected by an order proposed to be made by him.

[20] Since the impugned order is admittedly made in the instant case, without complying with these essential principles of natural justice, the petitioners are entitled to succeed and the order is liable to be quashed and set aside.

[21] Counsel for the respondents, however, contended that even if we hold that the power under sec. 258 of the Act can be exercised by the Municipal Commissioner only in consonance with rules of natural justice, we must hold on the facts of this case that the failure to follow the rules of natural justice before passing the impugned order has not vitiated the order. He urged that the defect, if any, in so passing the order was made good and cured by the hearing given to the petitioners Nos. 1 and 2 by the Town Planner after the impugned order was passed. The argument is clearly unsustainable because the vice which attaches to an order passed in contravention of rules of natural justice cannot be cured ex post facto by affording to the person affected thereby an opportunity to represent his case after the order is passed. An order made in breach of the principles of natural justice is void and au opportunity given to the affected person to represent his case after such an order is made cannot have the effect of resuscitating a still-born order. The fatal defect in the proceeding may be cured only if the authority passing the order, realising that it had acted hastily and arbitrarily, annuls its decision, proceeds to reconsider the whole matter afresh after affording to the person affected a reasonable opportunity to represent his case and arrives at a fresh decision. Admittedly, that was not the procedure" adopted here; what was done was a very inadequate substitute for a full re-hearing and it cannot obviously have the effect of validating the impugned order.

[22] Counsel for the respondents next urged that non-compliance with the principles of natural justice has not resulted in miscarriage of justice in the instant case because the petitioners have, in fact, no defence. He contended that the decision of the first respondent is eminently just and reasonable in the circumstances of the case and no

useful purpose would have been served even if the first respondent had served a show-cause notice on the petitioners before making the impugned order. This argument is equally unsustainable and must also be negatived. The suggestion that even if the petitioners had been heard, result adverse to them would have necessarily followed is replete with all the defects and all the unfairness which attach to the impugned order. It seeks to perpetuate the very vice which vitiates the impugned order because it pre-judges the case of the petitioners even before disclosing to them the whole of the case against them and giving them the chance of calling such evidence as they might desire to call to deal with the charge. There is yet another and a more fundamental reason for not accepting the submission made before us. The consideration whether miscarriage of justice has, in fact, resulted or not is wholly irrelevant in judging the validity of an order passed in violation of the rules of natural justice. As pointed out by Bhagwati C. J. in the decision dated 23rd, 24th and 25th June, 1969, Original Jurisdiction Appeals No. 1 and 2 of 1969 : (East India Co. v. Official Liquidator, Raj Ratna Mills Ltd. XI G.L.R. 457).

> "The audi alteram partem rule is indeed so vital and fundamental to the basic concept of justice that where it is infringed, the Courts do not pause to inquire whether there has been any miscarriage of justice as a result of its breach. The breach of natural justice is itself miscarriage of justice which entitles the applicant to succeed."

> It may also be noted that an argument very much similar to the one that is advanced before us was urged before the Supreme Court in the Board of High School and Intermediate Education, U. P. and others v. Kumari Chatra Srivastava and others, 1970 (1) Supreme Court Cases, 121, at page 123, and while negativing the argument it was observed that:

> "Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed, xx xx xx. The learned counsel urges that this would be casting heavy burden on the Board. Principles of natural justice are to some minds burdensome but this price- a small price indeed-has to be paid if we desire a society governed by the rule of law."

In view of this position, the second submission of the learned counsel for the respondents must also fail.

[23] We, therefore, allow the petition and make the rule absolute by issuing a writ of certiorari quashing and setting aside the order dated October 13, 1969, passed by the first respondent under sec. 258 of the Act. The respondents will pay the costs of the petition to the petitioners.

Petition allowed.