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generally speaking, is not presumed to make any substantial alteration in the existing law beyond what it expressly declares or beyond the immediate scope and object of a good statute."

Harbans Singh, J.

None of the two cases before us is of testamentary disposition. According to the Explanation to section 30, right is given to a Hindu male to dispose of even coparcenary interest by will. The limitations on the powers of a Hindu coparcener to alienate such property during his lifetime continue and in this respect a person governed by Hindu Law and a person governed by custom are at par. Thus so far as the right of alienation *inter vivos* are concerned, Hindu males even under the Hindu Succession Act do not enjoy any better rights than those who are governed by custom and thus there is no question of any discrimination. Women form a category apart, for the amelioration of which Constitution by Article 15(3) specifically permits legislation. Thus the mere fact that Hindu females have been given extended rights of ownership and alienation is no ground for holding that all other rules of custom or Hindu Law restricting the power of alienation of ancestral or coparcenary property, as the case may be, have automatically been abrogated.

In view of the above, I feel that no grounds have been made out to doubt the correctness of the Bench decision in *Kaur Singh's case* and there appears to be no merit in these two appeals, which are hereby dismissed with no order as to costs.

D. FALSHAW, C.J.—I agree.

Falshaw C.J.

INDER DEV DUA, J.—I agree with the order proposed.

Inder Dev Dua, J.

B.R.T.

FULL BENCH

Before S. S. Dulat, A. N. Grover and P. C. Pandit, JJ.

SURINDER NATH UTTAM,—*Appellant.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 66 of 1963.

1965

May, 12th.

Constitution of India (1950)—*Art.* 226—*Allegation of* mala fides *against the respondents made in a petition but denied by respondents—Whether to be enquired into—Procedure to be followed if enquiry is to be held stated.*

Held that the orders of the Government or governmental authorities can be assailed on the ground *inter alia* that they were made *mala fide* or in abuse of powers or for collateral or extraneous reasons which all involve absence of good faith. When an allegation is made that a particular order or decision is *mala fide* and the allegation is denied, the Court will ordinarily enquire into the question of fact but it always has the discretion to direct the petitioner to have the matter decided in regular action if such a course is considered necessary and expedient for a proper disposal of the case in view of all the facts and circumstances.

Held, that the Court will inform the parties of its intention to investigate the disputed facts whenever it decides to do so and then adopt such a course as may be proper and necessary to determine those facts in the light of the rules contained in Chapter 4-F(b), Volume V of the Rules and Orders framed by this Court.

Case referred by the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice P. C. Pandit on 21st January, 1964 to a larger Bench for decision of an important question of law involved in the case. The case was decided by a Full Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice P. C. Pandit on 12th May, 1965.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of the Hon'ble Mr. Justice I. D. Dua, dated the 25th January, 1963, in Civil Writ No. 563 of 1961.

ABANASHA SINGH, WITH M. R. SHARMA, ADVOCATES for the Appellant.

L. D. KAUSHAL, DEPUTY ADVOCATE-GENERAL WITH R. C. DOGRA, ADVOCATES for the Respondents.

ORDER OF THE FULL BENCH.

Grover, J.

GROVER, J.—The reference of two questions, which will be presently stated to the Full Bench, has been made in these circumstances. Two persons Surinder Nath Uttam and Ram Sarup were holding temporary posts in the Estate Office, Chandigarh, of a Cashier and an Accountant, respectively. On 4th April, 1959, their services were terminated. At that time Surinder Nath Uttam had put in 13 years of service, whereas Ram Sarup had been in service for a period of 15 years. They filed writ petitions under Article 226 of the Constitution, which were dismissed by a learned Single Judge on 25th January, 1963. They filed

appeals under clause 10 of the Letters Patent, which came up before a Bench for hearing.

In view of the allegations contained in the petitions as also the observations made by the learned Single Judge, on which an argument was raised on behalf of the appellants that the action taken by the Government was not *bona fide*, and was actuated by *mala fides*, the Bench has referred the following two questions for decision by the Full Bench—

> "(1) Whether, when an allegation is made that a particular order or decision is *mala fide* and the allegation is denied, this Court is bound to enquire into the question of fact raised by the pleas; and
>
> (2) Whether the disputed fact should be settled on the pleas as they stand in the light of the affidavits of the parties, or, whether the Court should inform the parties of its intention to fully investigate the fact and only then decide the question?"

It appears that the Bench considered it desirable that an authoritative view may be expressed on the correct procedure to be adopted not only in petitions arising out of service matters but also touching various other decisions made by Governmental or statutory authorities where allegations of *mala fides* are made.

It may be mentioned at the outset that the arguments before the Full Bench were confined mainly to matters arising out of orders made with regard to Government servants holding temporary posts, but on principle there does not appear to be any distinction between cases of that category and other cases where orders are attached or challenged by petitions under Article 226 on the ground of *mala fides* or lack of *bona fides* or bad faith on the part of authorities making those orders.

It is apparent from the order of reference that Mr. Abnasha Singh, learned counsel for the appellants, sought to canvass not only the question whether the orders

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terminating their services had been made by way of punishment but also that they had been prompted by bad faith on the part of certain officers, who were actuated by factious reasons or motives. The first difficulty, which the Bench appeared to have felt, was whether motive would be a relevant factor in the matter of termination of service of a Government servant holding a temporary post. In *Parshotam Lal Dhingra* v. *Union of India* (1), S. R. Das, C.J., analysed the position with regard to such servants in paragraph 28, thus—

(1) A termination of service brought about by the exercise of a contractual right is not *per se* dismissal or removal.

(2) Likewise, the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment.

(3) Misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists under the contract or the rules, to terminate the service, the motive operating on the mind of the Government is wholly irrelevant.

(4) But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may choose to punish the servant and if it is sought to be founded on misconduct, negligence, inefficiency, or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.

The learned Chief Justice apparently accorded approval to what Chagla, C.J., had said in *Shrinivas Ganesh* v. *Union of India* (2), in the following passage:—

"Whatever may be the motive which may influence the exercise of a legal right, if the legal right

(1) A.I.R. 1958 S.C. 36.
(2) A.I.R. 1956 Bom. 455.

exists then the motive becomes irrelevant, and if in a case where section 240(3) or Article 311 does not apply, the Government has the right to dispense with the services of a temporary servant, then it is not open to a temporary servant to say that his services were dispensed with for an ulterior motive or for a motive which was not a proper motive."

In a very recent decision in *Jagdish Mitter* v. *The Union of India* (3), there is a good deal of discussion of the above aspect of the matter in which previous cases were also reviewed. After referring to *Parshotam Lal Dhingra's case* and the law laid down therein by S. R. Das, C.J., Gajendragadkar, J. (as he then was) made a distinction between cases, in which enquiry, which ultimately leads to the discharge of a temporary servant, is held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and he should be discharged, and other cases where the authority may choose to exercise its power to dismiss him after a formal departmental enquiry. In the former set of cases the requirements of section 240(3) of the Government of India Act or Article 311(2) of the Constitution would not be attracted. But in the latter type of cases, *prima facie,* the termination would amount to dismissal of the temporary servant with the result that the requirements of the aforesaid provisions would become applicable. It was then emphasised that since considerations of motive operating in the mind of the authority have to be eliminated in determining the character of the termination of services of a temporary servant, the form, in which the order terminating his services is expressed, will not be decisive. It is the substance of the matter which determines the character of such an order. After referring to other decisions it was held that the enquiry which had been made against Jagdish Mitter was one only of a preliminary nature, and not with a view to taking disciplinary action against him, and that the order of discharge, which was ultimately passed, did not flow from the findings made in that enquiry. But in view of the language used in the order of discharge, which cast a stigma on the servant, the

(3) A.I.R. 1964 S.C. 449.

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order was held to be one of dismissal and as the requirements of section 240(3) of the Government of India Act had not been followed, the order of discharge was set aside.

It would, therefore, appear that the rule laid down in *Parshotam Lal Dhingra's case* about motive being irrelevant where the services of a temporary servant are terminated in terms of the contract or the relevant rule has been accepted and followed; and the argument that has been advanced by Mr. Lachhman Dass Kaushal on behalf of the respondents is that questions relating to *mala fides* or lack of *bona fides* are inextricably mixed up with motive and if motive is altogether to be ignored or is irrelevant, it is not open to the temporary servant to challenge the order of termination of services against him on the ground of *mala fides*. On the other hand, Mr. Abnasha Singh has sought to derive support for his contention that *mala fides* on the part of the authority can form a good ground on which the validity of the order of termination of services can be attacked from several observations in *Jagdish Mitter's case* itself. According to him, in the same judgment reference has been made to certain other decisions in which the orders had been attacked on the ground of *mala fides*. The first is *S. Sukhbans Singh* v. *The State of Punjab* (4). That was the case of a Tehsildar, who was appointed as an Extra Assistant Commissioner on probation in 1945. In 1952, he was reverted to the post of Tehsildar from which he had been promoted. In 1953 a warning was served on him in which it was stated that he had been guilty of misconduct in several respects. Gajendragadkar, J. (as he then was) in *Jagdish Mitter's case* observed:—

> Thus, the decision in this case was based mainly, if not solely, on the ground that the reversion of the officer was *mala fide*. It is true that in the course of the judgment, this Court has observed that having regard to the sequence of events which led to the reversion followed by the warning administered to the officer considered in the light of his outstanding record, the reversion could also be held to be a punishment; but the officer's plea which proved effective was the plea of *mala fides* against the Government."

(4) A.I.R. 1962 S.C. 1711.

Mr. Abnasha Singh says that in *Sukhbans Singh's case*, no enquiry of any kind had preceded the order of reversion, and all that the Court considered was whether Sukhbans Singh had been punished. It is pointed out that after narrating the sequence of facts and events up to the date when the order of reversion was made and also as to what transpired on September 18, 1953, when the warning was given by the Government, their Lordships proceeded to arrive at the following conclusion—

> "The only reasonable inference which can be drawn from all these facts is that the Government in fact wanted to punish him for what it thought was misconduct on his part and, therefore, reverted him. The omission of the Government to give reasons for his reversion does not make the action any the less a punishment but as the requirements of Article 311(2) were not fulfilled, as they ought to have been, the Government wanted to give the reversion the appearance of an act done in the ordinary course entailing no penal consequences. The circumstances clearly show that the action of the Government was *mala fide* and the reversion was by way of punishment for misconduct without complying with the provisions of Article 311(2). The reversion of the appellant is, therefore, illegal."

Mr. Abnasha Singh has next relied on *P. C. Wadhwa* v. *The Union of India and another* (5), in which the reversion of P. C. Wadhwa of the Indian Police Service was set aside on the ground that it had been ordered by way of punishment. A regular enquiry into his conduct was being held, but it was thought that since that enquiry would take long time, he might be reverted in the meanwhile, and an order of reversion was made by the Government. S. K. Das, Actg. C.J., delivering the judgment on behalf of himself and Ayyangar, J., said that although, as pointed out in *Parshotam Lal Dhingra's case*, the motive operating on the mind of the Government may be irrelevant, but it must also be remembered that in a case where Government has by contract or under the rules the right to reduce an officer in rank, Government may nevertheless choose to punish

(5) A.I.R. 1964 S.C. 423.

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the officer by such reduction. Therefore, what is considered in a case of this nature is the effect of all the relevant factors present therein. If on a consideration of those factors the conclusion is that the reduction is by way of punishment involving penal consequences to the officer, even though Government has a right to pass the order of reduction, the provisions of Article 311 of the Constitution are attracted. Mudholkar, J., speaking for himself and on behalf of Subba Rao and Raghubar Dayal, JJ., observed that a perusal of the file of the servant showed that instead of suspending him during the pendency of the enquiry, resort was had to his reversion on certain vague grounds, and that even in the departmental enquiry which had been subsequently held after the order of reversion, the only punishment awarded to him was of stoppage of one increment without prejudice to his future. As a result of what the Government did, the servant had lost the benefit of having been restored to his former post in the light of the actual action taken against him on the basis of the findings of the Enquiry Officer. In these circumstances there was no doubt that the order of the Government was *mala fide*.

The next case which is of good deal of importance is that of *Ram Saran Das* v. *The State of Punjab*, Civil Appeal No. 36 of 1963, which was disposed of by the Supreme Court on September 16, 1963. Ram Saran Das was working as a Revenue Assistant, Agrarian Reforms, Hissar, on probation, and was removed from service by an order passed by the Governor of Punjab under rule 23 of the Punjab Civil Services (Executive Branch) Rules, 1930. He challenged the validity of that order by a writ petition in this Court, which was dismissed *in limine* by a Division Bench. Ram Saran Das then appealed to their Lordships by special leave. After referring to his career and his allegations against Mr. Bhim Singh, who was the Deputy Commissioner, Ferozepore, as also Shri Pooran Singh, the Senior Superintendent of Police of that place, and his case that the impugned order was in substance an order of dismissal—his alternative contention being that it was passed *mala fide* and in an arbitrary, capricious and unconstitutional manner, their Lordships observed—

> "As we have briefly indicated, the petition filed by the appellant makes serious allegations in

support of his case that the impugned order amounts to punishment and has been passed *mala fide*. It appears that the High Court was not impressed by these allegations, and so, chose to dismiss the petition summarily. In our opinion, the High Court should not have adopted such a course in the present case. It may sound elementary to say so, but nevertheless we ought never to forget that justice must not only be done fairly but must always appear to be so done. When a responsible public servant holding a judicial office moves the High Court under Article 226 and contends that the termination of his services, though ostensibly made in exercise of the power conferred under Rule 23 of the Rules, really amounts to his dismissal, or that its exercise is *mala fide*, the High Court should have called upon the respondent to make a return and then considered whether the allegations made by the appellant had been proved, and if they were, what would be the result of the said finding on his argument that the impugned order amounts to dismissal, or has been passed *mala fide*."

Their Lordships proceeded to say—

"There can be no doubt that in such cases, the form in which the order has been passed cannot be regarded as decisive. If in the light of the evidence adduced before it, the Court is satisfied that notwithstanding the ostensible form in which the impugned order has been passed, in substance it amounts to the appellant's dismissal, then the Court may be driven to the conclusion that Article 311 applied to the case and non-compliance with the mandatory provisions of Article 311(2) may render the order invalid. The other question which may also require consideration is; if the appellant is able to prove the allegations made by him, would that justify his grievance that the exercise of the powers conferred on the Governor under Rule 23 of Rules was *mala fide*. In that connection it will be necessary to examine the question as to whether proof of malice against Mr. Bhim Singh can

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introduce an element of *mala fides* in the order ultimately passed by the Governor. We wish to express no opinion on any of these points. We have set out these considerations to indicate why we think that it would have been more appropriate if the High Court had called upon the respondent to file its return and then examined the merits of the writ petition filed by the appellant."

Finally, while remanding the case to the High Court, it was observed—

> "In a case of this kind where serious allegations are made by the appellant against responsible officers of the respondent it may be desirable not to rely merely on affidavits, but to take evidence in Court. That, however, is a matter which the High Court in its discretion will have to consider. If the appellant wishes that he should be allowed to give evidence in support of his allegations, the High Court may allow him to do so. In that event the respondent may also be called upon to give evidence in rebuttal.
>
> In the result we allow the appeal, set aside the order passed by the High Court and remand the writ petition to the High Court with the direction that it should be dealt with in accordance with law * *."

I have quoted *in extenso* from the above judgment because Mr. Abnasha Singh has strenuously contended that this case and other decisions mentioned before show that their Lordships have not strictly followed the view expressed by Chagla, C.J., in the Bombay case that it is not open to a temporary servant to say that his services were dispensed with *mala fide*. It is submitted that on that view the allegations of *mala fides* would have been totally disregarded and treated as irrelevant in the aforesaid cases, but that was not done and the orders were struck down on the ground that they had been made *mala fide*. In my opinion, it is neither necessary nor is it within the province of this Court to express any view on this aspect of Mr. Abnasha Singh's argument. There can, however, be

little doubt that in the presence of the decisions in the cases of *Sukhbans Singh, P. C. Wadhwa* and *Ram Saran Das* and several other decisions which will be presently discussed, it is not possible to treat the allegations of *mala fides* as irrelevant when they are made while attacking an order of the Government or governmental authorities. In *S. Partap Singh* v. *State of Punjab* (6), a writ petition filed by Dr. Partap Singh, a Civil Surgeon in the employment of the State Government, had been dismissed by this Court. Dr. Partap Singh had been granted leave preparatory to retirement, but subsequently orders were made by the Government revoking the leave and recalling him to duty. He was simultaneously placed under suspension pending the result of a departmental enquiry into certain charges of misconduct which also had been ordered against him. The main ground of challenge was that the Chief Minister of the State was actuated by *mala fides* and, therefore, the orders were bad. The first observation in this connection of Ayyangar, J., who delivered the majority judgment, which is noteworthy is that if the Chief Minister was actuated by *mala fides* in taking action against Dr. Partap Singh, such an action would be vitiated. After referring to certain English cases, Ayyangar, J., proceeded to say that the two grounds of *ultra vires* and *mala fide* are most often inextricably mixed and he summarised the position thus—

> "Pausing here, we might summarise the position by stating that the Court is not an appellate forum where the correctness of an order of Government could be canvassed and, indeed, it has no jurisdiction to substitute its own view as to the necessity or desirability of initiating disciplinary proceedings, for the entirety of the power, jurisdiction and discretion in that regard is vested by law in the Government. The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated

(6) A.I.R. 1964 S.C. 72.

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mala fide for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event the fact that the authority concerned denies the charge of *mala fides,* or asserts the absence of oblique motives or if its having taken into consideration improper or irrelvant matter does not preclude the Court from enquiring into the truth of the allegations made against the authority and affording appropriate reliefs to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out."

It was next observed that the Constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the State, including the Government, acts *bona fide* and within the limits of its power and when a Court is satisfied that there is abuse and misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual. In *C. S. Rowjee* v. *State of Andhra Pradesh* (7), in which case also *mala fides* had been alleged against the Chief Minister of the State, it was pointed out that imputations of *mala fides* and improper motives are made in several cases which sometimes have no foundation in fact and, therefore, it has become the duty of the Court to scrutinise them with care so as to avoid being in any manner influenced by them where they have no foundation in fact. In this case the Court felt constrained to hold that the allegations that the Chief Minister was motivated by bias and personal ill-will against the appellants before their Lordships stood unrebutted and, therefore, the impugned orders were set aside. It may be mentioned that in *Dr. Partap Singh's case* also, it was held that the dominant motive which induced the Government to take action against him was to wreak vengeance on him for incurring the wrath of the Chief Minister and bringing discredit on him by certain allegations which he had made in an article appearing in the Blitz followed by communication to the same newspaper by his wife confirming those allegations,

(7) A.I.R. 1964 S.C. 962.

large part of which was found to be true by their Lordships. The conclusion reached was that the impugned orders were vitiated by *mala fides*, in that they were motivated by an improper purpose which was outside that for which the power or discretion was conferred on Government. The above two cases have a material bearing on the procedure and practice which ought to be followed in deciding writ petitions in which allegations of *mala fides* have been made but that matter will be discussed at the proper stage.

Apart from the English cases referred to in *Dr. Partap Singh's case* by Ayyangar, J., it will be useful to mention a decision of the House of Lords, *Smith* v. *East Elloe Rural District Council* (8), in which a compulsory purchase order with regard to certain property had been challenged on the ground that it had been made wrongfully and in bad faith. Viscount Simonds, Lord Morton of Henryton and Lord Radcliffe decided the matter primarily on the language of paragraph 16 of the Schedule contained in the Acquisition of Land (Authorisation Procedure) Act, 1946, according to which a compulsory purchase order could not be questioned in any legal proceedings whatsoever. As Viscount Simonds put it, it could not be predicated of any order that it had been made in bad faith until it had been tested in legal proceedings, and that was just what paragraph 16 barred. Lord Reid and Lord Somervell of Harrow delivered dissenting opinions. Lord Reid considered the implication and meaning of the expression "*mala fides*" when used in relation to the exercise of statutory powers and said that this word had never been precisely defined, as its effects had happily remained mainly in the region of hypothetical cases. It covered fraud or corruption. He further drew a distinction between an *ultra vires* act done *bona fide* and an act on the face of it regular but which would be held to be null and void if *mala fide* was discovered and brought before the Court. According to him, the victim of *mala fides* would have his ordinary right of resort to the Courts.

Out of the Indian decisions, it is necessary to mention only a few of them which are authoritative and binding. In *Lahore Electric Supply Co. Ltd.* v. *Province of Punjab*

(8) (1956) I.A.E.R. 855.

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(9), an order was made by the Government requisitioning all property, etc. under the control of the Lahore Electric Supply Company under rule 75-A of the Defence of India Rules. The validity of that order was attacked on various grounds including lack of *bona fides* and extraneous considerations, Sections 15 and 16 of the Defence of India Act, 1939, were put forward on behalf of the Government as creating a bar to the challenge of any order made under the Defence of India Rules, but before the Lahore Full Bench it was admitted by the learned Advocate-General that if it could be shown and the Court came to the conclusion that the orders were passed for some collateral purpose, that is, they were not made *bona fide* for the purpose alleged by the order, section 16 would constitute no bar. Young C.J., delivering the judgment of the Court, examined a number of English cases and expressed the view that it was obvious from a consideration of the authorities that the Court could interfere if it was satisfied either that the order under rule 75-A was *ultra vires* or that the order was not made *bona fide* but for some collateral object. In *Naranjan Singh Nathawan* v. *State of Punjab* (10), where certain detention orders made under the Preventive Detention Act, 1950, had been challenged, it was observed that the question of bad faith, if raised, would certainly have to be decided with reference to the circumstances of each case and in *Ashutosh Lahiry* v. *The State of Delhi* (11), it was laid down that the satisfaction of the authority making the order as to the matters specified in the aforesaid Act was the only condition for the exercise of its powers and the Court could not substitute its own satisfaction for that of the detaining authority. It was, however, open to the detenu to establish, if he could, that the order was made *mala fide* and in abuse of powers and the order of detention might be declared invalid if it could be proved to have been made by the authorities in *mala fide* exercise of their power. The observations in *British India Corporation, Ltd.* v. *The Industrial Tribunal* (12), are also to the effect that where there are allegations of *mala fide* against the Government in a petition under Article 226 of the Constitution, it becomes the duty of the Court to accord hearing to the parties after issuing notice to their res-

(9) A.I.R. 1943 Lah. 41.
(10) A.I.R. 1952 S.C. 106.
(11) A.I.R. 1953 S.C. 451.
(12) A.I.R. 1957 S.C. 354.

pondents and record its decision on a consideration of all the circumstances of the case. This Court had dismissed the petition in that case *in limine* and their Lordships were of the opinion that it was not justified in doing so.

Thus there is abundant authority for the view—and the decisions of the Supreme Court in which that view has been expressed are binding on us—that orders of the Government or governmental authorities can be assailed on the ground *inter alia* that they were made *mala fide* or in abuse of powers or for collateral or extraneous reasons which all involve absence of good faith. In the present reference we are not called upon to express our opinion with regard to the exact scope and content of the allegations of *mala fides* which would render an order void and inoperative. It became necessary to discuss the various decisions on the subject because the first question referred to us could not be satisfactorily answered without deciding whether such allegations are relevant or irrelevant when they are made for the purpose of attacking an order passed by a competent authority.

The main point relating to practice and procedure which should be adopted when allegations of *mala fide* are made which is involved in both the questions can now be considered. It has been suggested on behalf of the appellants that the observations in the cases of *Ram Saran Das, Dr. Partap Singh and C. S. Rowjee* as also *British India Corporation, Ltd. (Supra)* leave no room for doubt that in such cases it becomes the duty of this Court to enquire into them and to decide the correctness or falsity thereof. Mr. L. D. Kaushal, suggests that these cases fall in a special category inasmuch as in two of them, the petitions had been dismissed *in limine* and in the other two, allegations of *mala fides* had been made against as high a dignitary as the Chief Minister of a State and it was in these circumstances that the aforesaid observations were made. He says that it is not possible to ignore the well-known rule which has found expression in numerous cases decided by all the High Courts in India, as also in some decisions of the Supreme Court that where there are disputed questions of fact which might require an elaborate trial and enquiry, the writ petitioners should be left to pursue their ordinary alternative

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remedies in the regular Courts. He has relied, in particular on *Union of India* v. *T. R. Varma* (13), in which an order of dismissal from Government service in respect of one T. R. Varma had been set aside by this Court in a petition, under Article 226 of the Constitution. The matter was taken on special leave to the Supreme Court and Venkatarama Aiyar, J., speaking for the Court, said that a writ petition was not the appropriate proceeding for adjudication of a serious dispute which could not be satisfactorily decided without taking evidence. It was further observed:—

> "It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondents to a suit."

In this case, the rule that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ, was stated to be well-settled. It was pointed out that although the existence of another remedy does not affect the jurisdiction of the Court but that is a matter which must be taken into consideration while granting writs. Mr. Kaushal has urged with a good deal of force and plausibility that if their Lordships intended to lay down any such absolute rule in the cases of *Ram Saran Das, Dr. Partap Singh, C. S. Rowjee* and *British India Corporation, Ltd.*, that whenever allegations of *mala fides* are made while attacking an order of the Government in a petition under Article 226, it becomes the duty of the Court to decide them, then it would lead to the result that an exception would be engrafted on the other rule which has been accepted as well-settled in *Union of India* v. *T. R. Varma* (13), and that a proper reading of all the aforesaid decisions does not justify such a course being adopted. Mr. Abnasha Singh, very fairly and properly agrees that the discretion of the High Court, which it undoubtedly possesses, under Article 226, has not been taken away by the law laid down in the aforesaid decisions and that it will depend on the facts of each case as to what course this Court will follow. He

(13) A.I.R. 1957 S.C. 882.

does, however, suggest that where there are allegations of *mala fides* which are not vague and are of a precise nature, this Court ought not ordinarily to dismiss the petition *in limine* but should call for the return and after examining and fully scrutinising the statement of facts in the affidavits supporting the petition and the return, it should proceed to make up its mind as to the course to be adpoted. According to him, suits in Civil Courts take a long time and involve inordinate delay and expense and aggrieved parties approach this Court under Article 226 for speedy and immediate relief and all these matters ought to enter into determination of the question, apart from other considerations like serious disputes on issues of fact, whether the petitioner should be directed to seek his remedy in the Civil Courts or the matter should be decided by this Court itself.

Keeping in view the submissions of the learned counsel for the parties and all the decisions of the Supreme Court discussed before, I venture to think that the answer to the first question should be like this:

> When an allegation is made that a particular order or decision is *mala fide* and the allegation is denied, the Court will ordinarily enquire into the question of fact but it always has the discretion to direct the petitioner to have the matter decided in a regular action if such a course is considered necessary and expedient for a proper disposal of the case in view of all the facts and circumstances.

Before answering the second question, it may be observed that if the Court decides to enquire into the question of fact relating to *mala fide* it ought to normally inform the parties of its intention to investigate the same. In that event the parties would be entitled to rely either on the affidavits which have already been filed or which may further be permitted to be filed as also invoke what is provided in the Rules & Orders of this Court. Rule 9 contained in Chapter 4-F(b), Volume V, is that if cause be shown or answer made upon affidavit putting in issue any material question of fact, the Court may allow oral testimony of witnesses to be taken and for that purpose may

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adjourn the hearing of the rule to some other date. In such a case either party may obtain summonses to witnesses, and the procedure in all other respects shall be similar to that followed in original causes in the High Court. It may be mentioned that as a matter of practice it will be almost impossible for this Court to allow oral testimony of witnesses to be taken in every case in which the disputed fact has to be investigated. It is noteworthy that even in England there has hardly been any occasion for the last several years when such a course has been adopted or allowed to be taken. In *Rex* v. *Kent Justices* (14), in proceedings for writs of *certiorari* and *mandamus* against certain Justices of the Peace an affidavit had been filed by the Justices and on behalf of the writ petitioner a notice was served upon them under Order XXXVIII, Rule 27 of the Rules of the Supreme Court to attend for cross-examination at the hearing of the petition. That provision was in the folowing terms:—

> "When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination at the trial.....and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge....."

It is stated in the report that Lord Hewart, C.J., said that for something like 50 or 60 years, no order had been made on the Crown side for the cross-examination of a deponent and it was enough to add that such an order was not likely to be made except in very special circumstances, and that no such special circumstances had been shown in that case. It is apparent that in view of the practical difficulties, which have already been indicated, allowing oral testimony of witnesses to be taken pursuant to rule 9 would not be possible nor desirable in every case where allegations of *mala fides* are made in a petition under Article 226. The Court will permit such a course to be adopted only in cases

(14) 1928 W.N. 137.

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of an exceptional type. Here again no hard and fast rule can be laid down to fetter the discretion of the Court and the course to be adopted will depend on the facts of each case. The answer to question No. 2, therefore, would be—

> The Court will inform the parties of its intention to investigate the disputed facts whenever it decides to do so and then adopt such a course as may be proper and necessary to determine those facts in the light of the rules contained in Chapter 4-F(b), Volume V of the Rules & Orders framed by this Court.

I would, therefore, answer the two questions referred to the Full Bench in the manner indicated above.

Daulat, J.

DULAT, J.—I agree that the answer to the first question must be in the negative and once it is clear that this Court is in law not bound to start an enquiry in every case, then it becomes a matter for the exercise of judicial discretion which must depend on the circumstances of each case for which no general rule can be laid down.

I agree that if an enquiry is found necessary, the proceedings must be in accordance with the rules of this Court contained in Chapter 4-F(b) of Volume V.

Pandit, J.

PANDIT, J.—I agree that the answers to the two questions should be—

(1) The Court is not bound, but it must be left to its discretion as to whether it should start an enquiry. That will, however, depend on the circumstances of each case, for which no general rule can be laid down.

(2) If the Court decides to start an enquiry, then it will inform the parties of its intention of doing so and in that case the proceedings would be in accordance with the rules of this Court contained in Chapter 4-F(b) of Volume V.

B.R.T.

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