(1964) 11 CAL CK 0002

Calcutta High Court

Case No: None

Additional Collector of Customs and Others		APPELLANT
	Vs	
Sohanlal Bahl		RESPONDENT

Date of Decision: Nov. 25, 1964

Acts Referred:

- Constitution of India, 1950 - Article 136, 226, 311(2)
- Imports and Exports (Control) Act, 1947 - Section 3(2)

Citation: 69 CWN 439

Hon'ble Judges: Bose, C.J; B.C. Mitra, J

Bench: Division Bench

Advocate: G.P. Kar and A.K. Banerjee, for the Appellant; Anil Sen, for the Respondent

Final Decision: Allowed

Judgement

B.C. Mitra, J.

This appeal is directed against an order of Banerjee, J., making absolute a rule issued under Article 226 of the Constitution. The application out of which this appeal arises was in regard to the action of the appellant No. 1 in confiscating 350 bags of lac alleged to have misdeclared as Molumma lac and in imposing a personal penalty of Rs. 5,000/-.

2. The respondent claims to be an established exporter of various forms of Land Acquisition Collector including refuse lac. On February 15, 1960, he entered into a contract for sale and export of 1800 bags of Moluma refuse lac to West Germany and registered the sale with the Indian Lac Exporters'' Association. The respondent thereafter applied for an export licence for shipment of 350 bags of the said lac and he was granted an export licence for the same. Thereafter he brought in the said 350 bags of lac for export and tendered the same to the Custom House, Calcutta, in two separate shipping bills, one for 250 bags and the other for 100 bags. The

respondent caused the goods to be surveyed and tested for lac contents by R.V. Briggs and Co. Private Ltd. and obtained a certificate showing that the percentage of lac content in the said consignment was 78.69 per cent. The appellants also took two samples for chemical examination out of the said two lots, and according to them the lac content of the lot of 250 bags was 81.64 per cent and the lac content of the lot of 100 bags was 88.37 per cent. But on a re-examination the appellants found that the lac content of the lot of 250 bags was 81.83 per cent and that of the lot of said 100 bags was 82.26 per cent.

3. A notice was served upon the respondent to show cause why the entire consignment should not be confiscated and penalty imposed upon him under Sections 167(8) and 167(37) of the Sea Customs Act. The charge framed against the respondent was that while he was permitted to export Molumma lac he attempted to export the commodity having lac content of 81.64 and 88.37 per cent, which are above the normal lac content of Molumma lac and for that reason he contravened the provisions of Section 167(8) of the Sea Customs Act. There was a further charge of violation of Section 167(37) of the Sea Customs Act as the respondent described the commodity as Molumma lac and valued it as such.

4. It is common case that goods having lac content up to 80 per cent is to be classified as Molumma lac and the respondent''s contention before the appellant No. 1, was that he was not liable to be punished either by an order for confiscation of the goods or by imposition of a penalty, as the lac content of the consignment sought to be exported by him was below 80 per cent as proved by the report of the surveyoRs. The respondent further contended that the appellants had tested the lac content by what is known as the Direct method whereas a correct assessment of the lac content could be made only by a test carried on by what is known as the Indirect Method. According to the respondent, in a test by the Indirect Method, impurities and foreign materials are excluded in finding out the lac content. It is contended by the appellants that at the hearing before the appellant No. 1, the correctness of the test made by the Customs Laboratory was not disputed by the respondent. After the hearing, the appellant No. 1 found the respondent guilty of the charge and by an order dated August 13, 1960, confiscated the lot of 250 bags, redeemable on a payment of fine of Rs. 2000/- and also imposed a personal penalty of Rs. 2500/-. Another order was made confiscating the lot of 100 bags redeemable on payment of Rs. 5000/- and imposing a personal penalty of Rs. 1000/-. Against these two orders the respondent obtained a rule from this Court in an application under Article 226 of the Constitution and this rule was made absolute by an order dated August 11, 1961. Sinha, J., in making the order held that he could not determine which of the two methods, namely, the Indirect Method or the Direct Method was the correct method to be applied for testing the lac content. By that order the adjudication matter was remanded to the Custom authorities for determination of the question as to whether the Direct Method or the Indirect Method was the correct method of test to be applied. According to Sinha, J., that is a question which the Custom

authorities should have considered and which they failed to consider.

5. After the said order of remand, the appellant No. 2 issued a notice dated December 21, 1961, to the respondent calling upon him to appear personally and produce evidence in support of his contentions. Pursuant to this notice the appellant No. 1 heard the matter on January 6, 1962, when the respondent produced two experts, namely, one Dr. Bhattacharjee, Secretary of the Shellac Export Council and Dr. Monjunath, Director of the Indian Shellac Bureau. The respondent also submitted on February 28, 1962, the opinion of one Dr. L.A. Jordon, a retired Director of Paint Research Station, Tedington, England. It is alleged that although the enquiry was concluded by the appellant No. 1 on February 18, 1962, he carried on inter-departmental enquiries and ex parte investigations without knowledge or notice of the respondent. Thereafter on June 22, 1962, the appellant No. 1 passed an order rejecting the contentions of the respondent and again directing confiscation of the said 350 bags of lac redeemable on payment of a fine of Rs. 19,000/- and also imposing a personal penalty of Rs. 5000/-.

6. One of the main grounds of attack of this order, before the trial Court, was that the order was made in violation of principles of natural justice inasmuch as the appellant No. 1 made personal enquiries, carried on discussions with various persons including the Deputy Chief Chemist of the Custom Laboratory and the Chief Chemist of the Government of India in the Department of Revenue. The respondent alleged that these enquiries, investigations and discussions were carried on behind his back and he was given no opportunity of meeting the arguments advanced against his contentions by the various persons with whom the discussions were carried on. After the said order was made the respondent moved an application under Article 226 of the Constitution and this appeal arises out of an order by which the rule obtained in this application was made absolute.

7. Mr. G.P. Kar appearing for the appellants, contended that there are serious disputed questions of fact, namely, whether the Direct Method or the Indirect Method of testing lac content in Molumma lac is the correct method. He further argued that there was a good deal of difference in the opinion of expert and scientist, and such difference could only be resolved by the Court upon taking evidence in a properly constituted action and not in an application under Article 226 of the Constitution. According to Mr. Kar, there is no doubt that there is a serious dispute as to which is the correct method of test, and the Court in an application under Article 226 should not go into such disputed questions of fact as it is not possible to come to a conclusion on the evidence contained in the affidavits filed by the parties.

8. Secondly it was contended by Mr. Kar, that the Court in an application under Article 226 of the Constitution, could not make an adjudication order, which under the Sea Customs Act was in the exclusive jurisdiction of the Customs OfficeRs. The Court was not sitting in appeal over the findings of the appellants, in the application

under Article 226 of the Constitution. It could not substitute its own findings for those of the appellant No. 1 who was discharging a statutory duty imposed upon him. It was further urged that it was no part of the duty of the Court in an application under Article 226 of the Constitution to take into consideration the weight of evidence in support of the rival contentions, and indeed under the Sea Customs Act the Court has no jurisdiction to make an order for adjudication under the said Act. If there has been a failure of justice for failure to observe the principle of natural justice, the Court should, according to Mr. Kar, direct the appellants to act according to law and not substitute its own adjudication order for the order made by the appellant No. 1 Mr. Kar further contended that the method of direct test applied by the Customs authorities in this case, was a method which was applied and adhered to by the Customs authorities all over the world and is a recognised and acknowledged method of testing the lac content of a commodity. This method cannot be lightly rejected, and if it is to be rejected at all, it can be done only after the Court is satisfied on taking evidence that it is not a correct method. That not having been done, namely, no evidence taken regarding the insufficiency of the Direct Method applied by the Customs authorities in this case, the Court should not have rejected the findings of the appellant No. 1, and indeed it had no jurisdiction to do so in an application under Article 226.

9. In support of the contention that in entertaining an application under Article 226 of the Constitution, the Court does not sit in appeal over the findings of the Tribunal and the jurisdiction which this Court exercise is a supervisory jurisdiction, Mr. Kar relied upon the decision of the Supreme Court in T.C. Basappa Vs. T. Nagappa and Another, . In this case it was held that in granting a writ of certiorari the Court does not exercise the powers of an Appellate Tribunal. The Court does not review or reweigh the evidence upon which the determination of the inferior Tribunal is based nor does the Court substitute its own views for those of the inferior Tribunal. In this case the Supreme Court relied upon its earlier decision in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, in which it was held that however extensive the jurisdiction of the Court might be under Article 226 of the Constitution, it was not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made. Relying upon these decisions, Mr. Kar contended that the trial Court had violated this principle of law, by trying to appreciate the evidence on which the decision of the adjudicator was based, and in effect and in substance the Court had substituted its own decision for that of the adjudicator and in doing so the Court had converted itself into a c t sitting in appeal over the decision of the adjudicator, which the Supreme Court had deprecated.

10. Mr. Kar also referred to another decision of the Supreme Court in Ambalal v. The Union of India and ORs., (3) AIR (1961) SC 264, in which the confiscation order was held to be bad and thereupon a prayer was made for proportionate reduction of the penalty imposed. Dealing with this question the Supreme Court held that although

there was a justification for such a prayer the penalty could not be reduced by the Court, as u/s 183 of the Sea Customs Act, the amount had to be fixed by the Customs Officer as he thought fit. Relying upon the observations of the Supreme Court in this decision, Mr. Kar argued that the duty to impose or not to impose penalty is a statutory duty of the Adjudicating Officer under the Sea Customs Act. He argued that the Court could not for any reason whatsoever usurp the functions of the Adjudicating Officer. The Court could in an appropriate case set aside the adjudication order. But then the matter must be left to the Customs Authorities for fresh adjudication according to law. the duties which have been imposed under the Sea Customs Act upon the Collector of Customs and other Customs Officers could be discharged by them alone. If they go wrong, their findings may be set aside, but it must ultimately be left to them to come to the correct decision according to law. This, Mr. Kar argued, is a well established principle. It is not for the Court to review or reassess the evidence which was tendered before the Adjudicating Officer and then substitute its own findings for those of the Tribunal. Mr. Kar next argued that in so far as decision of the adjudicator involved a finding of fact, it cannot be challenged on the ground that the finding of fact recorded by the adjudicator is based on insufficient or inadequate evidence. In support of this contention Mr. Kar relied upon another decision of the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, . In this case, in dealing with the question of the Court''s jurisdiction, it was held that the jurisdiction to issue a writ of certiorari was a supervisory jurisdiction and the Court exercising it was not entitled to act as an appellate Court. It was further held that the finding of fact reached by an inferior Court or Tribunal as a result of appreciation of evidence could not be reopened or questioned in writ proceedings. An error of law which was apparent on the face of the record could be corrected by a writ, but not an error of fact, however gave it might be. It was further held that it was exclusively for the Tribunal to decide if there was sufficient evidence on a particular point and also if an inference could be drawn from the facts as proved. Mr. Kar argued that the appellant No. 1 had considered the evidence tendered by the respondent and thereafter he had come to the decision. It was therefore not for the Court in an application under Article 226 of the Constitution to reopen this finding on a reassessment and appreciation of the evidence tendered before the adjudicator. That is a matter, Mr. Kar argued, which is exclusively within the jurisdiction of the adjudicator. In our opinion, this contention of Mr. Kar is sound. It is not for the Court in a writ petition to set aside or revise a finding of fact recorded by a Tribunal on the evidence tendered by the parties. The Court cannot substitute its own findings of fact for those of the Tribunal unless it is shown that the Tribunal arrived at its finding on no evidence at all or that there has been violation of the principles of natural justice.

11. In support of the same proposition Mr. Kar also relied upon another decision of the Supreme Court in Girdharilal Bansidhar Vs. Union of India (UOI), in which the Supreme Court while dealing with the question of the Court''s jurisdiction held as

follows:

This apart, we must emphasize that Court dealing with a petition under Article 226 is not sitting in appeal over the decision of the Customs Authorities and therefore the correctness of the conclusion reached by those authorities on the appreciation of the several items in the Hand-book or in the Indian Tariff Act which is referred to in these terms, is not a matter which falls within the writ jurisdiction of the High Court. There is here no complaint of any procedural irregularity of the kind which would invalidate the order, for the order of the Collector shows by its contents that there has been an elaborate investigation and personal hearing accorded before the order now impugned was passed.

12. Relying upon those observations, Mr. Kar argued, that the appellant No. 1 had given the respondent the fullest opportunity of producing all his evidence in support of his contentions. The respondent had produced experts before the appellant No. 1 at the hearing of the matter. There is therefore no procedural irregularity, Mr. Kar contended, which would invalid able the order of the appellant No. 1 as was held by the Supreme Court in the above mentioned case. That being so, Mr. Kar argued that there were no grounds whatsoever for quashing or setting aside the order of the appellant No. 1.

13. Mr. kar also referred to another decision of the Supreme Court in The State of Orissa and Anr. v. Murlidhar Jena, (6) AIR (1963) SC 405, in which while dealing with the same question the Supreme Court held that the Court should not appreciate the evidence on which the decision of the Tribunal is based. It was also held that whether the evidence on which a Tribunal acts was sufficient or satisfactory for justifying its conclusion was a matter which could not be considered in a writ petition. the conclusion reached by a Tribunal on evidence tendered before it, cannot be set aside by the Court in a writ petition even if the Court does not agree with the conclusion of the Tribunal unless it is proved that there was no evidence for the Tribunal to arrive at that particular conclusion. Mr. Kar argued that it is not the respondent''s case that he did not get the opportunity of producing the evidence before the adjudicator on the question of method to be adopted in testing the lac content of the commodity. He further argued that the adjudicator took into consideration the opinion of the experts who attended the hearing before him and also the reports of other authorities which the respondent had obtained in support of his contentions. It was after considering the views of the experts and also the other evidence produced by the respondent, that the Tribunal had come to a conclusion. It is not for this Court in a writ petition to quash or set aside the finding of the Tribunal based on the evidence which the adjudicator duly took into consideration, unless there has been a violation of the principles of natural justice.

14. Dealing with the question of the Adjudicating Officer having consulted various persons and also having read scientific literature on the question of the test to be applied, and thereafter not giving the respondent an opportunity of being heard,

Mr. Kar submitted that the respondent was not entitled to be heard at every stage of the proceeding. He contended that so long as the respondent was given an opportunity of making representations and such opportunity was duty availed of, the conduct of the Adjudicating Officer could not be assailed merely because he had read scientific literature and had consulted other experts on the question of the test to be applied. The respondent was given a hearing, which he attended with expert advisers with whom the Adjudicating Officer had fully discussed the question. If thereafter the Adjudicating Officer had read literature on the subject and had consulted experts it cannot be said Mr. Kar argued, that he had taken evidence behind the back of the respondent. It was further argued that the respondent could not claim another hearing after the Adjudicating Officer had added to his own knowledge in the matter, by reading literature or by consulting experts. A party is not entitled to a hearing at every stage of a proceeding so long as he has got a fair opportunity of making representations regarding his case. The principles of natural justice are not violated, Mr. Kar argued, merely because the Adjudicating Officer had read scientific literature or consulted other experts and because he failed to give the respondent an opportunity of making fresh representations after he has read the literature and consulted with experts. In support of this contention Mr. Kar relied on a decision of the Supreme Court in F.N. Roy Vs. Collector of Customs, Calcutta, , in which a contention was raised that a party should have been given a personal hearing of the appeal which was preferred to the Central Board of Revenue. Dealing with this question, it was held that there is no rule of natural justice that at every stage a person is entitled to a personal hearing Mr. Kar argued that if no hearing was given to the respondents there would have been a violation of the principles of natural justice. But as the hearing had been given and the respondent had the fullest opportunity of making his representations there was no violation of the principle of natural justice. Then again, Mr. Kar argued, assuming that a fresh opportunity was given to the respondent, he would have raised the same contention, namely, that the Indirect Method was the correct Method of test. No fresh grounds have been urged by the respondent in the petition to show that he had fresh grounds of objection, to the conclusion arrived at by the Adjudicating Officer, and which he failed to urge before the Adjudicating Officer as no hearing was given to him. This branch of the argument will be dealt with later in this judgment.

15. The next point argued by Mr. Kar was that the respondent had admittedly an alternative remedy under the Sea Customs Act. Indeed he has conceded in paragraph 44 of the petition that he had a right of appeal, but his contention was that this alternative remedy was not a suitable remedy for the relief prayed for in this application. Mr. Kar argued that mere allegation that alternative remedy is not suitable is not enough. The petitioner has not stated any grounds as to why the appeal ad thereafter a revision as provided by the Act would not be a sufficient and adequate remedy. As there is a statutory remedy available to the respondent, this

Court should not exercise its jurisdiction under Article 226 of the Constitution. It is true that an alternative remedy by itself is no bar to an application under Article 226. But before such an application can be entertained and relief granted to an applicant, he must satisfy the Court that the alternative remedy would not be sufficient or adequate or would be infructuous. In this case the Sea Customs Act itself provides for a relief by way of appeal to the Central Board of Revenue and thereafter a revision of the decision of the Central Board by the Central Government. Mr. Kar argued that such remedies having been provided by the statute itself and the respondent having made out no grounds for not resorting to the remedy open to him, no relief should have been granted to him. In support of this contention Mr. Kar relied upon a decision of the Supreme Court in Union of India (UOI) Vs. T.R. Varma, , in which it was held that it was well settled that when an alternative and equally efficacious remedy was open to a litigant he should be required to pursue that remedy and not invoke the jurisdiction of the High Court to issue a prerogative writ. In that decision the Supreme Court approved and accepted the same principle affirmed in its earlier decision in Rashid Ahmed Vs. The Municipal Board, Kairana, in which it was held: "The existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs." It was held that where such remedy existed it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there were good grounds. Relying upon this decision of the Supreme Court, it was contended that even assuming that the Adjudicator was wrong in his decision, there is no reason why the respondent should not have preferred an appeal to the Central Board of Revenue, and thereafter assuming that the Central Board of Revenue''s decision was against the respondent, he still had a right to an application for revision. It has not even been alleged by the respondent in his petition that he would not get justice if he pursued the alternative remedies available to him. That being so, Mr. Kar argued, no relief should have been granted to the petitioner in this application. In support of this contention Mr. Kar also relied upon another decision of the Supreme Court in The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others, . In this case the same question of alternative remedy was considered by the Supreme Court and it was held as follows at p. 1453 of the report: "This latter appeal has been brought against the decision of the Calcutta High Court and the only point which could have been argued by the appellant would be one of jurisdiction, since the appellant had moved the said High Court under Article 226 that too against the order of the Collector of Customs. But in regard to the other matters, the parties have come to this Court directly against the orders of the Collector of Customs and this Court generally does not entertain appeals against the orders passed by a Tribunal unless the alternative remedies provided by the relevant Act by way of appeals or revisions have been pursued by the aggrieved party. We have already seen that against the order of confiscation and fine passed by the Collector of Customs, an appeal is competent, and against the decision of the appellate authority, a revision also lies. That being so, we would have hesitated to

entertain these appeals if each one of them had come separately for hearing before us. In fact, the question as to whether the writ jurisdiction of the High Court could be successfully invoked by a party immediately after an order is passed against him by the Collector of Customs u/s 167(12A) and Section 183, does not appear to have been argued before the Calcutta High Court when it entertained the writ proceedings from which Appeal No. 299 of 1963 has been brought to this Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, , the rule that a party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, though not one which bars the jurisdiction of the Court to entertain the petition or to deal with it, but is a rule which Courts have laid down for the exercise of their discretion. That is one aspect which is to be borne in mind in dealing with C.A. No. 299 of 1963, and the other writ petitions in this group.

16. If an appeal is entertained against an order passed by the Collector of Customs and our jurisdiction is allowed be invoked under Article 136, it would lead to this anomalous result that question of fact determined by the Collector of Customs may have to be re-examined by us as a Court of facts and in argument impeaching the validity of propriety of the order of fine may also have to be considered, and these precisely are the matters which the Legislature has left to the determination of the appellate and the revisional authorities as prescribed by Sections 190 and 191 of the Sea Customs Act. Besides, the High Court should be slow in encouraging parties to circumvent the special provisions made providing for appeals and revisions in respect of orders which they seek to challenge by writ petition under Article 226.

17. Relying upon the above mentioned decisions of the Supreme Court, Mr. Kar argued that the respondent had an alternative remedy and as he had not exhausted such remedy available to him, he was not entitled to any relief in an application under Article 226 of the Constitution. As noticed earlier in this judgment, the respondent has admitted in the petition that he has an alternative remedy, but has failed to make out any grounds to show that such remedy would not be sufficient or that it would be infructuous. The respondent had a right to prefer an appeal to the Central Board of Revenue and also a right to a revision by the Central Government under the Sea Customs Act. But instead of adopting the remedy available to him, he has chosen to come to this Court and asked for a relief which is entirely discretionary.

18. The objection raised by Mr. Kar would have been of considerable force but for the special circumstances of this case. The appellant No. 1 had made an earlier adjudication order against which the respondent had come up before this Court in an application under Article 226 of the Constitution. This Court had issued a rule on the respondent''s application and had made the rule absolute and remanded the matter to the customs authorities for a fresh adjudication. The application out of

which this appeal arises was directed against the second adjudication order made by the appellant No. 1. This second adjudication was made by the appellant No. 1 pursuant to and in terms of the remand order made by Sinha, J. The order of Sinha, J. has become final and it is not clear to us, if the argument regarding alternative remedy was advanced in the earlier proceedings under Article 226. In the peculiar circumstances under which the second adjudication was made by the appellant No. 1, we cannot hold that the alternative remedy available to the respondent by way of appeal and revision would be a bar to relief in an application under Article 226 of the Constitution.

19. Mr. Anil Sen appearing for the respondent contended that the mere existence of some alternative remedy by way of an appeal or application for revision would be no bar to relief in a writ petition. He argued that even though the respondent had the alternative remedy of an appeal to the Central Board and thereafter an application for revision by the Central Government, such alternative remedy would not debar his client from relief in the present application. In support of this contention, Mr. Sen relied upon a decision of the Supreme Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, . In that case the Supreme Court considered the question whether an alternative remedy is a bar to an application for a writ of certiorari. But in doing so, the Supreme Court approved and accepted its earlier decision in Union of India (UOI) Vs. T.R. Varma, to which reference has already been made in this judgment. The Supreme Court held that the Court before which the writ petition was moved had a discretion to entertain the petition even though there was an alternative remedy and that whether in a particular case the existence of an alternative remedy would bar the relief in a writ petition was a matter which would depend upon the facts of each particular case. The Supreme Court also accepted and approved another earlier decision in the State of Uttar Pradesh v. Mohammad Nooh, (14) AIR (1958) SC 86, in which it was held that the fact that the aggrieved party had an adequate alternative remedy might be taken into consideration by the superior Court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior Courts subordinate to it and ordinarily the superior Court would decline to interfere until the aggrieved party ahs exhausted his other statutory remedies, if any.

20. Mr. Sen next referred to a decision of the House of Lords in Ridge v. Baldwin and ORs., (15) (1963) 2 AER 66. In that case however, the decision of the Watch Committee of a Local authority in dismissing a Chief Constable was declared to be null and void on the ground that the Committee had failed to observe the principles of natural justice which it was bound to do, but which it completely failed to do so, as it did not frame any charge against the party nor did it inform him of the grounds on which it proposed to proceed against him and the party was not given a proper opportunity to present his defence. This decision in our view, has no application to the instant case now before us, because the respondent was given notice of the

matter which was going to be investigated by the adjudicator, and he had all the opportunities he needed to present his contentions before the adjudicator.

21. Mr. Sen next referred to a decision of the Judicial Committee in Secretary of State v. Mask and Co. (16) 67 IA 222, in support of his contention that the Court has the power to reopen cases where the provisions of the statute have not been complied with or the Tribunal has not acted in conformity with the fundamental principles of judicial procedure. But the Judicial Committee did not consider the question of the violation of the principles of natural justice, although it did consider the applicability of the fundamental principles of judicial procedure. But I the same cases, the Judicial Committee also held that the jurisdiction of the Civil Courts is excluded by the order of the Collector of Customs on appeal u/s 188. The Judicial Committee however thought it unnecessary to consider whether prior to taking such an appeal u/s 188 a party would have been entitled to resort to the Civil Court or whether they would have been confined to the right of appeal u/s 188. To our mind this decision does not support Mr. Sen''s contentions. It is admitted by the respondent that he got the opportunity of presenting his case and also his evidence before the adjudicator. There has therefore been no violation of the fundamental principles of judicial procedure as held by the Judicial Committee. Besides, the Judicial Committee did not go into the question whether a party would be required to exhaust an alternative remedy which he had.

22. Mr. Sen next referred to another decision of the Supreme Court in State of Mysore Vs. K. Manche Gowda, . In this case the Supreme Court considered the question of reasonable opportunity under Article 311(2) of the Constitution being given to a Government servant when he was sought to be published. It was held that the Government servant must be told of the grounds on which action is proposed to be taken and if such grounds are not mentioned in the notice served upon the Government servant it would be nearly impossible for him to know what is operating in the mind of the authority concerned in proposing a particular punishment. He would not get the opportunity, if the notice does not state the grounds, to explain why he does not deserve any punishment at all or why the proposed punishment is excessive. If the proposed punishment is based on the previous record of service and that is not disclosed in the notice, the result of such omission would be that the main reason for the proposed punishment is withheld from his knowledge. The Supreme Court held that the point in such cases is not whether the explanation which may be put forward by a Government servant would be acceptable, but whether he has been given an opportunity to give his explanation. Relying upon this case Mr. Sen argued that the adjudicator had consulted various experts whose opinions he sought and on which opinions he acted. He contended that the respondent had this own explanation to give in answer to the opinion expressed by the experts. It may be that such opinion would not have been acceptable to the adjudicator, but the question is whether an opportunity was given to the respondent to give his explanation with regard to the

opinions of the experts which were used against him.

23. This contention of Mr. Sen is not without substance. Admittedly the appellant No. 1 had consulted experts on the question of the test to be applied and he had acted upon the advice given by the experts. The opinion of the experts was not taken in the presence of the respondent, nor was he informed about such opinion. He therefore had no opportunity to offer his explanations to the points which were sought to be urged against him. It is true that a party is not entitled to a hearing at every stage of an investigation. But it is equally true that he must get an opportunity to offer his explanation to the case made against him. That explanation may or may not be acceptable to the adjudicator, but the opportunity cannot be denied to him. In so far as the opinion of the experts was not communicated to the respondent and an opportunity to deal with such opinion, or give his explanation regarding the same, was denied to him, we are of the opinion that there has been to that extent in any event a violation of the principles of natural justice in the facts and circumstances of this case. If it was necessary for the adjudicator to take the opinion of the experts, and if the weight of the opinion was such as to enable him to come to the decision which he recorded, the respondent should have been given the opportunity to give his explanation to the opinion in so far as it was against his contention.

24. The next point urged by Mr. Sen was that the appellant No. 1 was biased against his client. The appellant No. 1 as the adjudicator in the first proceeding before him had held his client guilty of misdeclaration and therefore liable to be punished by confiscation of the goods and also by imposition of a fine. That adjudication was set aside by the order of Sinha, J., the appellant No. 1 had affirmed an affidavit in which he challenged the statements made by the respondent. He had therefore already formed an opinion in the matter and although he purported to proceed afresh, after the order of Sinha, J., it was not possible for him to be impartial and altogether free from prejudice regarding the respondent''s conduct. Mr. Sen contended that there is ample evidence of bias and prejudice in the adjudication order made by the appellant No. 1 inasmuch as although the offence may be the same the amount of fine was enhanced. This, Mr. Sen contended, vitiated the order made by him which cannot therefore stand. In support of this contention, Mr. Sen relied upon a decision of the Supreme Court in Manak Lal Vs. Dr. Prem Chand, . This was a case under the Bar Councils Act in which a lawyer was charged with professional misconduct and was tried by a Tribunal of the Bar Council. This Tribunal consisted of three members, one of whom who was the Chairman, had filed a vakalatnama on behalf of the opposite parties in certain criminal proceedings and had in fact argued the case on that date. The lawyer who was charged with misconducted had acted as a pleader for the applicants in the criminal proceedings out of which the misconduct proceedings arose. It was in these facts that the Supreme Court held that the Constitution of the Tribunal with the Chairman who appeared against the appellant in the criminal proceedings out of which the charge of misconduct arose, suffered

from a serious infirmity. Dealing with the question of bias, the Supreme Court held that the test is not whether in fact a bias has affected the judgment, but whether a litigant could reasonably apprehend that a bias attributed to a member of the Tribunal might have operated against him in the final decision. But it was also held that where pecuniary interest is not attributed to a member of a Tribunal, but instead a bias is suggested, it is necessary to consider whether there is reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the mind of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. In the instant case now before us, the mere fact that the appellant No. 1 had affirmed an affidavit in which he had contested the case of the respondent does not, in our opinion, create such grounds as to raise a doubt as to the fairness of the conduct of the Appellant No. 1 as the adjudicator. He could not have any interest in the matter except the discharge of the statutory duty imposed upon him under the Sea Customs Act. If he had held against the respondent on the question of the test to be applied, he had done so on expert advice which he sought and obtained. That in our view is not such evidence of bias as to preclude all possibility of the respondent''s getting justice from the appellant No. 1. It has not been alleged that the appellant No. 1 had any personal interest in the matter or that he bore any ill-will or malice against the respondent. He is one of the officers prescribed by Section 182 of the Sea Customs Act to deal with the matter and whatever he had done, was in discharge of his duties as a statutory officer. If in discharge of his duties, he has acted contrary to law or has violated the procedure prescribed by law, his decision is liable to be set aside in this or in the other proceedings prescribed by the Sea Customs Act. But the events that have happened and on the facts of this case, we cannot say that he has shown such bias or prejudice against the respondent in his conduct as to disable him from dealing with the matter again fairly and justify. If he errs again, law will take its own course.

25. Mr. Sen next referred to another decision of the Supreme Court in East India Commercial Co. Ltd.,Calcutta and Another Vs. The Collector of Customs, Calcutta, . In this case a licence was granted to the appellant for import of fluorescent tubes and fixtures. The licence was issued to the importer subject to the condition that the goods were to be utilised only for consumption as raw material in the licence-holder''s factory and no portion of the same was to be sold to any party. Information was received by the customs authorities that the importer was selling the goods to other parties and thereupon the matter was investigated. Later the goods were seized and by consent of parties, were sold under an order of this Court and the sale proceeds were kept in the custody of the Magistrate. A criminal prosecution was lodged against the Director of the Company which ended in his discharge. Thereafter the customs authorities started proceedings u/s 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947 and issued a notice to show cause why the sale proceeds should not be

confiscated and penal action taken for breach of condition of the licence, namely, that the goods after import were to be used for consumption as raw materials by the importer and no part of the same were to be sold or utilised by another party. Thereupon the importer filed an application under Article 226 of the Constitution for the issue of appropriate writs. This application was dismissed by this Court on the ground that it was within the jurisdiction of the customs authorities to enquire whether there has been any contravention of the statutory provisions so as to merit an order of confiscation. The Supreme Court firstly held that if the customs authorities had no jurisdiction to initiate the proceedings or make an enquiry under the relevant Sections of the statute, a writ can be issued by the Court prohibiting the customs authorities from proceeding with the same and that an Administrative Tribunal could not ignore the law declared by this Court and initiate proceedings in violation of the law so declared. It was further held that the infringement of the condition in the licence not to sell the imported goods but use the same as raw materials in the importer''s own factory, was not an infringement of the order and therefore such infringement did not attract Section 167(8) of the Sea Customs Act. This decision, in our view, is of no assistance to the respondent on any of the points urged by Mr. Sen before us in this appeal.

26. There remains only one other matter of which we should take notice in this appeal. Mr. Kar referred to the Rule as drawn up and had drawn our attention to the material portion of the Rule at page 67 of the Paper Book. Mr. Kar argued that the rule issued calling upon the appellants to show cause why appropriate writs should not be issued directing the appellants in this appeal to forbear from giving any effect or any further effect to the order No. 161 dated June 22, 1962, and directing the appellants in this appeal to rescind, cancel and/or set aside the said order and then proceed in accordance with law and why the writ in the nature of a certiorari should not be issued setting aside or quashing the said order No. 161. Mr. Kar argued that it was this rule which the trial Court was dealing with and disposing of and therefore Banerjee, J., could not go beyond the scope of this rule. He argued that it was this Rule which was made absolute and as the rule clearly indicated that the appellants were to show cause why they should not proceed according to law, the trial Court could not stop further proceedings by the customs authorities in terms of the rule issued by this Court. Mr. Kar argued that in declining to direct a fresh adjudication by the customs authorities, the trial Court had acted beyond the scope of the rule issued by this Court, and that if the rule was to be made absolute, as was done, a fresh adjudication by the customs authorities according to the provisions of the Sea Customs Act should have been directed. This contention of Mr. Kar is not without substance. The trial Court in disposing of the matter cannot overlook or ignore the terms of the Rule. The appellants were called upon to show cause in terms of the Rule which clearly indicated that if the adjudication order was to be set aside, the matter was to be dealt with according to law. The terms of the rule being what they are, as mentioned above, a fresh adjudication by the customs

authorities cannot, in our view, be stopped.

27. In our view the law as already stated is well settled that this Court in dealing with an application under Article 226 of the Constitution does not sit in appeal over the decision of the Tribunal which is impugned, nor is it for this Court to appreciate evidence on which the Tribunal acted in arriving at the decision. The correctness of the decision of the Tribunal cannot be rectified merely on the ground that there is an error of fact on the records or that the decision has been vitiated by an incorrect appreciation of the evidence by the Tribunal. The Sea Customs Act has imposed a duty on the customs authorities to deal with questions of misdeclaration, confiscation of goods and imposition of fine by way of penalty for violation of the provisions of the statute. It is for the customs authorities to adjudicate on such matters and this Court does not sit in appeal over the decision of the Tribunal. The Court cannot substitute its own decision for that of the Tribunal, unless there is an error of law apparent on the face of the records of there has been a violation of the principles of natural justice. But even if the decision is vitiated by an error of law on the face of the record or by the violation of the principles of natural justice, the Tribunal''s power and the duty to adjudicate, cannot be taken away by this Court in an application under Article 226 of the Constitution.

28. In this case it is admitted that the appellant No. 1 had consulted various experts on the question of the test to be applied in coming to a decision of the lac content of the commodity. It is clear that he has relied and acted upon the opinion given by the experts and also that such opinion was not taken in the presence of the respondent, who was not informed of the opinion tendered by experts which was against him and on which the appellant No. 1 had relied, in giving his decision. The respondent therefore as already pointed out by us, had no opportunity of making his representations on the opinion of the exports. It was strenuously argued before us by the learned counsel for the appellants that even if such opportunity was given the respondent would merely have reaffirmed his contentions and it was clear from the petition that he had nothing fresh to say on the matter. But in our opinion even if the respondent had nothing fresh to urge to controvert the opinion of the experts, he should have been given an opportunity to deal with the opinion of the experts and make his own representations in that behalf. To this extent there has been a violation of the principles of natural justice. There may be no substance in the representations that the respondent might have made in answer to the opinion of the experts which was against him. But that did not justify a denial of an opportunity to him to make such representations as he might have been advised to make. On this point a reference may be made to the decision of the Supreme Court in State of Mysore Vs. S.S. Makapur, .

29. In our opinion, Banerjee, J., is right in holding that there has been a violation of the principles of natural justice in so far as the appellant No. 1 has consulted N.K. Choudhury of the Customs House Laboratory, Monoharlal, Deputy Chief Chemist of

the Calcutta Customs House and H.D. Suri, Chief Chemist of Government of India, Revenue Department, and had given no opportunity to the respondent to make his representations on the advice or opinion given to the appellant No. 1 by the three above mentioned experts. But we confine ourselves only to the consultation which the appellant No. 1 had with the persons mentioned above and say nothing with regard to his reference to the minutes of the meeting of Lac and Lac Products Sectional Committee which he had taken into consideration, nor with regard to the study of scientific literature made by the appellant No. 1. A reference to scientific literature on the subject or report of an expert committee is not a matter about which, in our view, the respondent is entitled to complain, nor is it a matter with regard to which his claim to make representations is justified.

30. For the reasons mentioned above, the appeal is allowed in part. The order of Banerjee, J., and the judgment in so far as it quashes the adjudication order No. 161 dated June 22, 1962, on the ground of violation of the principles of natural justice as found by us are upheld and affirmed. But we set aside the judgment and the order in so far as there has been refusal to allow a fresh application. We hold that the appellants will be at liberty to make a fresh adjudication order according to law. Each party to bear and pay its costs.

Bose, C. J.

31. I agree.