

(2016) 4 JKJ 425

Jammu & Kashmir High Court

Case No: LPA No. 110 of 2008, CMP No. 181 of 2008, LPA No. 104 of 2008 and CMP No. 168 of 2008

Muhammad Yousuf
Allai

APPELLANT

Vs

Javaid Ahmad Geelani

RESPONDENT

Date of Decision: April 16, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11

Citation: (2016) 4 JKJ 425

Hon'ble Judges: Mr. Dhiraj Singh Thakur and Mr. Bansi Lal Bhat, JJ.

Bench: Division Bench

Advocate: M/s Z.A. Shah, Sr. Advocate with Mr. I. Sofi, Advocate, Mr. B.A. Dar, Advocate, Mr. Majid Jahangir, Advocate and Mr. A. Amin, Advocate, for the Respondents; M/s M.C. Dinghra, Advocate and M.K. Pandita, Advocate, for the Appellant/Petitioner

Final Decision: Disposed off

Judgement

Mr. Dhiraj Singh Thakur, J. - The present Letters Patent Appeals have been preferred against the judgment and order dated 06.06.2008 by

virtue of which the writ court decided the writ petitions bearing SWP Nos. 973 of 2000 and 1755 of 2000 by way of a common order.

2. With a view to understand the controversy in its correct perspective, it is necessary to give in brief a few material facts.

LPA No. 110/2008

3. Appellant-Muhammad Yousuf Allai came to be selected as a Munsiff under the RBA category pursuant to notification dated 14.05.1998 issued

by the Public Service Commission based upon the claim of the appellant that he was resident of village Rakhsahilvat, which was scheduled as a backward area in terms of SRO 126 of 1994.

4. The selection of the appellant forms the genesis of the litigation in the present case primarily on the ground that the said appellant was in fact a permanent resident of Village Mirgund and that he had fraudulently obtained the certificate with a view to get the benefit of reservation provided for residents of village Rakhsahilvat.

SWP No. 1724/1999

5. The appellant's selection was challenged for the first time in SWP No. 1724/1999, by Riyaz Ahmad Gada, who, inter alia, alleged that the

appellant-Muhammad Yousuf Allai had got selected in the reserved category fraudulently inasmuch he was not actually a resident of the backward area Rakhsahilvat to which he claimed that he belonged to the said area.

6. It was also contended in that petition that in the earlier process of selection, he had appeared in the open merit category, which only supported the fact that he never belonged to the said backward area.

This writ petition came to be decided by a Division Bench of this Court by virtue of judgment and order dated 29.09.2009 by holding as under:

..It was also contended that Respondent No. 5 appeared in the Open Merit Category in the previous similar selection process, but appeared in

the Category reserved for candidates belonging to Backward Area while participating in the subject selection process. It was contended that

Respondent No. 5 thus played fraud. The Officer who issued the certificate in favour of Respondent No. 5, upon which the said respondent

staked his claim for the vacancy reserved for Backward Area candidates, was not made a party to the writ petition. There is, thus, no scope of

going into the question whether the said certificate was or was not a valid certificate and, accordingly, whether Respondent No. 5 took recourse to

fraud while offering himself as a candidate belonging to Backward Area Category. A person, who belongs to Backward Area Category, belongs

to said category from the class he is born, but acceptance thereof depends upon a certificate to that effect being issued by the competent authority.

Until such a certificate is issued, despite the person belonging to Backward Area Category cannot stake his claim as a Backward Area

candidate..

SWP No. 973/2000

7. This writ petition was filed by the petitioner, Javaid Ahmad, challenging the selection of private Respondent No. 6 therein (Muhammad Yousuf

Allai) on the ground that the said respondent had manipulated his RBA category certificate even when he was not a permanent resident of village

Rakhsahilvat. A prayer was thus made, seeking the quashment of selection/appointment of the said respondent.

SWP No. 1755/2000

8. It appears that based upon the allegations of mis-representation, fraud and concealment of material facts with regard to the selection and

appointment of appellant-Muhammad Yousuf Allai, the Divisional Commissioner, Baramulla vide his communication dated 30.05.2000 directed

the Deputy Commissioner, Baramulla to investigate the matter and furnish a detailed report with regard thereto.

9. On coming to know about the said report, the appellant filed the said petition, seeking a mandamus against the official respondents not to

conduct any kind of investigation or enquiry regarding the validity or otherwise of the RBA certificate issued in his favour by Tehsildar Sonawari till

the disposal of writ petition No. 973/2000, by the High Court.

10. The basis of the relief sought for by the petitioner in the said petition was that no parallel enquiry could be conducted by the Deputy

Commissioner when the matter with regard to the validity of the certificate issued in favour of the petitioner was pending before the writ court in

writ petition No. 973/2000.

By virtue of interim order dated 11.08.2003, the writ court with the agreement of learned counsel for the parties directed the Registrar Vigilance to

conduct a fact finding enquiry regarding the issuance of the certificate in favour of Muhammad Yousuf Allai under SRO 126 of 1994, by Tehsildar

Sonawari. What was stated by the writ court was as under:

...It is apposite to mention here that the petitioners in both the writ petitions are members of the Judicial Service and the controversy raised needs

to be settled so that these two officers are in a position to function efficiently and effectively and for finding out the truth, an inquiry has become

imperative. Mr. Qayoom learned counsel for Mr. Allai was pointedly asked to explain the cause against the inquiry, if any. Responding to the

query in fairness he urged none. As a matter of fact learned counsels appearing on either side have agreed for assigning the fact finding process to

the Registrar Vigilance. Accordingly I order as under:-

The inquiry shall be completed and report placed before the Court within one month which period shall begin from 18th of August, 2003. The

Registrar Vigilance shall associate both the petitioners if and when necessary. The Divisional Commissioner Kashmir shall cause appearance of

Tehsildars Sonawari and Pattan before the Registrar Vigilance along with the inquiry file and other relevant record pertaining to the subject matter

of the writ petitions on 18th of August, 2003 who shall have to remain in attendance as may be directed by the Registrar Vigilance...

CMP No. 2702-A/2000, shall stand disposed of. Interim direction dated 12.11.2000 is vacated. Be listed after report is filed. Full context of this

order shall be communicated to all concerned including official respondents.

LPA No. 118/2003

11. Order dated 11.08.2003 was challenged by the appellant before a Division Bench of this court in LPA No. 118/2003 on the ground that the

appellant's counsel had in fact not agreed for assigning of the fact finding enquiry to the Registrar Vigilance. This argument, however, was not

accepted inasmuch as the Division Bench was of the view that it runs counter to the statement appearing in the judgment of the court under appeal.

It was of the opinion that statement of facts and concessions as recorded in the court orders were not open to challenge in appeal proceedings and

were conclusive of the facts and events so stated in the order and further that in case a party felt that the statements were not correctly reflected in

the order, it would be open to such a party to approach the same court for purposes of inviting the attention of the judge, making the order to that

effect. The appeal was accordingly dismissed and the direction dated 11.08.2003 upheld.

12. Based on the aforementioned directions, the Registrar Vigilance recorded the statements of various witnesses and submitted a report based

upon which the writ court by virtue of judgment and order impugned inter alia issued directions that no judicial work be assigned to the appellant

and the matter be placed before the Full Court for requisite administrative action. The Registrar General was also directed to seek instructions from

the Chief Justice regarding registration of a criminal case in terms of the report of the Registrar Vigilance.

13. Appellant Muhammad Yousuf Allai being aggrieved of the said order has questioned the same in LPA Nos. 110/2008 and 104/2008.

14. The case set up in the Letters Patent Appeals and urged before us was that the appellant was in fact a resident of village Mirgund. However,

way back in 1977, the appellant received a share in the house of one Ali Muhammad Rather, who was a resident of Rakhsahilvat Tehsil Sonawari

as Gifted on 25th of October, 1977. Subsequently, he also received as gift a small piece of land measuring 10 marlas covered by Survey No. 24,

situated in the same village on 21.03.1992 and on account of that, the appellant migrated to village Rakhsahilvat lock, stock and barrel and started

residing there from 1981.

15. With a view to support the factum of his residence at Rakhsahilvat, the appellant placed reliance upon a Migration Certificate dated

21.02.1982 issued by Tehsildar Pattan, certifying such a migration.

16. Reliance was also placed upon a ration card issued in favour of the appellant to the same effect. Similarly, reliance was placed upon an RBA

certificate issued by the Tehsildar Sonawari, reflecting the appellant to be a resident of the backward area of Rakhsahilvat. It is stated to have been

issued on 03.12.1996.

17. In the background of the aforementioned factual matrix, the judgment and order impugned is challenged inter alia on the following ground that

the Registrar Vigilance had conducted the proceedings ex-parte and recorded the evidence of the witnesses without giving a reasonable

opportunity of being heard to the appellant and thus, prevented him for defending himself.

18. It was urged that such an enquiry could not have formed the basis of the directions, which were issued by the learned Single Judge.

19. It was further urged that the objections filed against the report of the Registrar Vigilance along with various documents, supporting the claim of

the appellant that he was a resident of village Rakhsahilvat, was never-considered by the writ court and rejected the same without any just cause or

reason.

20. It was urged that the writ court had totally ignored the certificates issued by the Numberdar and Chowkidar of the village as also the ration

card issued by official authorities, which reflected him to be a resident of village Rakhsahilvat and instead proceeded to give overwhelming

precedence to the records of the Board of Secondary Education as also the certificate of the University to reject the assertion of the appellant.

It was, therefore, urged that non-consideration of the objections filed by the appellant to the report of the Registrar Vigilance as also the material

submitted by the appellant has the effect of vitiating the order-of the learned Single Judge.

21. With a view to over-come the residence status of the appellant as reflected in his matriculation certificate, LLB Degree and the enrolment

certificate as an Advocate, all of which reflected his permanent residence at Mirgund, it was urged that the matriculation examination had been

undertaken by the appellant at a point of time when he had not migrated from his original place of birth to Rakhsahilvat and therefore, the same had

correctly reflected his residential certificate at Mirgund which continued to be shown in his future examinations also. This it was stated happened as

a matter of course. However, it was urged that in one of the forms submitted by the appellant at the time of appearing in the LLB examination, he

had recorded his permanent residence at Rakhsahilvat, Baramulla and the address for correspondence as Mirgund Baramulla.

22. It was further urged that the examination/admission form of graduation filled by the appellant showed his permanent residence at village

Rakhsahilvat and address for correspondence at village Mirgund. Reliance was also placed upon a scooter driving licence, and the library register

of Amar Singh College, Srinagar, which showed that the place of the residence was Rakhsahilvat.

23. To sum up the appellant places reliance upon the following documents, which showed his permanent residence at village Rakhsahilvat with the

corresponding dates on which the documents came into existence which are as follows:

(i) Matriculation Certificate: 1982

(ii) Report of Numberdar And Chowkidar: 1993

(iii) 2nd Year (10+2) Examination Form: 1983

(iv) Voters List: 1988

(v) Examination Form of LLB: 1989

(vi) Ration Card: 1990

(vii) Vehicle Registration Certificate: 1991

(viii) LLM Certificate: 1992

(xi) Choola/Khana No. of Residential House: 1994

(x) State Subject Certificate: 1995

(xi) Birth Certificate of the Appellant's Child: 3.3.1996

(xii) Public Notice By Tehsildar: 18.11.1996

(xiii) Backward Area Residence Certificate: 3.12.1996

(xiv) Renewal of Backward Area Certificate: 9.9.2010

24. It was urged that some of the documents came into existence even before the village Rakhsahilvat came to be declared as a backward area in

terms of SRO 126 and therefore on that account, the authenticity and veracity of the documents could not have been disputed.

25. It was urged that the appellant had earlier appeared in the examination held for selection of Munsiffs in the year 1994 as a General Category

candidate and not under the RBA category inasmuch as by then he had not acquired the said status having not completed 15 years of residence at

village Rakhsahilvat and thereafter again in 1994 and March, 1996. However, it was only in December, 1996 that the certificate was issued in his

favour upon completion of the requisite 15 years of residence where after alone when the petitioner appeared for the third time for selection as a

Munsiff held in the year 1999.

It was urged that the fact that the appellant had earlier appeared in the general category could not in any manner hold him to be of that category for

ever neither would it indicate fraud and manipulation only on that account inasmuch as it was possible for the appellant to acquire the status of

resident of backward area if he otherwise completed 15 years of residence in such an area.

26. The appellant urged that the issue with regard to the validity or otherwise of the RBA certificate and his status as such could not be gone into

yet again on the principles of constructive res judicata inasmuch as in an earlier writ petition being SWP No. 1724/1999, connected with SWP

No. 3851/1997, titled Gh. Rasool Gadda v. State of J&K & Ors., a Division Bench of this court had refused to interfere with the selection of

the appellant in the RBA category even when a similar allegation had been levelled in the said petition that the appellant having appeared in the

general category in the previous two selections for the post, of Munsiffs must be presumed to have played fraud.

27. It was stated that the judgment and order dated 29th of September, 2009 was subsequently challenged before the Apex Court, which too was

dismissed vide order dated 03.02.2012, upholding the judgment passed by the Hon'ble Court.

28. It was thus urged that the selection of the appellant having not been interfered with upto the Supreme Court, the said issue could not have been

permitted to be raked up yet again.

29. It was further urged that the only authority competent to cancel the certificate issued was the authority as prescribed under SRO 126 and the

course adopted by the writ court by appointing the Registrar vigilance as an enquiry officer was therefore impermissible.

30. Lastly, it was stated that it would be highly inequitable at this stage to upset the selection and appointment of the appellant after as many as 15

years and therefore, urged that the appellant be protected against ouster.

31. Per contra, counsel for the respondents submitted that the principle of res judicata would not be attracted to the facts and circumstances of the

present case inasmuch as there was no adjudication on the issue of validity of the RBA certificate possessed by the appellant neither by a division

bench of this court nor by the Apex Court and in the absence of any such adjudication, the principles of res judicata or constructive res judicata

had no application.

32. It was further urged that the petitioner Riyaz Ahmad Gada in that round of litigation was a candidate in the open merit category and even

otherwise had no claim over the post under reserved category of RBA.

It was further stated that Registrar Vigilance was within his competence to conduct the enquiry inasmuch it was only acting in accordance with the

directions of the High Court pursuant to a consent order to which the appellant was also a party.

It was further stated that the appellant had successfully prevented an enquiry ordered by the Divisional Commissioner at the relevant time by

agreeing to the conduct of an enquiry by the Registrar vigilance and therefore, could not be permitted to turn around and question the same in these

proceedings.

In any case it was urged that the mere fact that there was some remedy available in terms of SRO 126, the same was by way of a revision where

the scope of interference was not as wide as in the case of an appeal, which was only available to a candidate whose request for grant of reserved

category certificate had been rejected. In any case, it was urged that nothing could prevent the high court in the exercise of its writ jurisdiction

under Article 226 to over order an enquiry notwithstanding the availability of an alternate remedy even if such an enquiry involved disputed

questions of fact.

It was stated that the reluctance of the High Court in not going into disputed questions of fact was not on account of any rule but was a self-

imposed limitation and that in appropriate cases, notwithstanding the availability of an appropriate forum, the court did interfere.

33. It was further urged that there was no violation of principles of natural justice during the conduct of the enquiry proceedings by the Registrar

Vigilance as the Registrar Vigilance was not to adjudicate on any issue but was only required to ascertain certain facts and that in the absence of

any adjudicatory process, the appellant would not have any cause of action to claim violation of principles of natural justice.

34. Reliance was placed on AIR 1968 SC 850 and AIR 1969 SC 262.

35. It was further urged that the appellant had been given a reasonable opportunity to appear before the Registrar Vigilance and therefore, there

was no basis to claim that he had not been heard.

36. On the factum of the residence of the appellant, it was stated that Registrar Vigilance had clearly established in his report that the appellant was

in fact not a permanent resident of village Rakhsahilvat, which fact is stated to have been highlighted even by the writ court in the judgment and

order impugned. It was further urged that Rakhsahilvat was brought within the category of backward area in the year 1988 and that the appellant

had manipulated all the certificates thereafter.

On violation of principles of natural justice

37. One of the main grounds urged at the time of hearing by learned counsel for the appellant was that since the enquiry conducted by the Registrar

Vigilance was in gross violation of the principles of natural justice, the same could not have formed a basis for the writ court to issue directions for

initiating administrative action.

38. It was urged that the enquiry officer did not give to the appellant reasonable opportunity of being heard, to cross-examine witnesses examined

by him and to produce evidence in defence.

39. Reliance in this regard was placed upon Union of India & Ors. v. T.R. Varma & Ors., AIR 1957 SC 882, Maneka Gandhi v. Union of

India, (1978) 1 SCC 248 and Union of India & Ors. v. Tulsiram Patel & Ors., (1985) 3 SCC 398, in support of this proposition.

40. In Maneka Gandhi v. Union of India, the Apex Court recognised the principle as expressed by Cooper Wandsworth Board of Works,

which held as under:

222....The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a

very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his

defence....

41. In the aforementioned case, the Apex Court followed the principle of law laid down in the State of Orissa v. Dr. (Miss) Binapani Dei &

Ors., AIR 1967 SC 1269, on the following grounds:

The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of

persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-

up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore arise from

the very nature of the function intended to be performed, it need not be shown to be super-added. If there is power to decide and determine to the

prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the

prejudice of a Person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of

a decision in any particular case.

42. As is evident from Binapani's case, the principles of natural justice are to be followed by judicial tribunals or other bodies if they have been

invested with authority to adjudicate upon the matters involving civil consequences.

43. In the present case, however, it can be seen that the Registrar Vigilance was only to conduct a fact finding enquiry and was to place the same

before the High Court. There was no adjudicatory role conferred upon him by the High Court and was only supposed to collect the relevant

material in regard to the allegations made against him in reference to the status of his being a resident of a backward area. In those circumstances, it

can safely be said that there was no requirement of giving any opportunity of being heard to the appellant, to cross-examine the witnesses

examined by the Registrar Vigilance or to lead evidence in his defence.

Even otherwise, the principles of natural justice have not been held to be inviolable. In R. Vishwanatha Pillai v. State of Kerala & Ors.,

(2004) 2 SCC 105, it was held that when an appointment is obtained on the basis of fake and frivolous documents, the question of violation of

principles of natural justice does not arise at all and the delinquent can be shown the door without conducting an enquiry.

44. In Mubarak Ahmad Bhat v. State & Ors., reported in 2011 SLJ 742 : 2011 (2) JKJ 586 [HC] and Muzaffar Ahmad Reshi v.

Deputy Commissioner & Ors., SWP No. 1860/11, decided on 28th of Sept. 2012 reported in 2012 (4) JKJ 764 [HC], this court held that

the principles of natural justice demand that right of hearing is to be given only to such a person who acquires a right genuinely and not otherwise.

45. In The Chairman, Board of Mining Examination and Chief Inspector of Mines, & Anr. v. Ramjee, AIR 1977 SC 965, the Apex

Court while dealing with the principle of natural justice observed as under:-

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded

against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each

situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities

and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No

man shall be hit below the belt-that is the conscience of the matter.

46. In Union of India & Anr. v. Tulsiram Patel, (1985) 3 SCC 398, a Constitution Bench of the Hon'ble Apex Court, while considering the

scope and extent of applicability of principles of natural justice to administrative actions observed as follows:-

So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an

opportunity to be heard before an order is passed would obstruct the taking of prompt action such a right can be excluded. This right can also be

excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its

exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralyzing the administrative process or where

the need for promptitude or the urgency of taking action so demands....

47. The above position of law was followed subsequently in R.S. Dass v. Union of India & Ors., AIR 1987 SC 593, when the Apex Court in

para 22 of the judgment in the above case observed as under:-

The principle of audi alteram partem is a basic concept of principles of natural justice. No one should be condemned without hearing is the

essence of justice. The Courts law apply this principle to ensure fair play and justice in judicial and quasi-judicial matters. Of late these principles

have been extended even to administrative action also. However, the application of the audi alteram partem rule is not applicable to all eventualities

or to cure all ills. Its application is excluded in the interest of administrative efficiency and expedition...

48. The principle of audi alteram partem being not wholly inviolable can further be noticed by the subsequent pronouncements of the Apex Court

in the case reported as S.L. Kapoor v. Jagmohan & Ors., (1980) 4 SCC 379. In the aforementioned case, the Apex Court in para 24

observed as under:-

24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done.

Jackson's Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

The distinction between justice being done and being seen to be done has been emphasized in many cases...

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the

observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord

Widgery C.J.'s judgment in *R.V. Home Secretary, Ex. P. Hosenball*, where after saying that 'the principles of natural justice are those fundamental

rules, the breach of which will prevent justice from being seen to be done'" he went on to describe the maxim as "'one of the rules generally

accepted in the bundle of the rules making up natural justice'".

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it

may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by

an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of

injustice or possible injustice. In *Altco Ltd. v. Sutherland Donaldson, J.*, said that the court, in deciding whether to interfere where an arbitrator

had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important

that the parties should not only be given justice, but, as reasonable men, know that they had justice or "'to use the time hallowed phrase'" that justice

should not only be done but be seen to be done. In *R.V. Thames Magistrates' Court, Ex. P. Polemis 15*, the applicant obtained an order of

certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional

Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not

seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been

properly conducted, the result would have been the same'. That is mixing up doing justice with seeing that justice is done (per Lord Widgery C.J.

at page 1375).

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice

had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of

natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As

we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the

court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because

courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal".

49. In *Aligarh Muslim University & Ors., v. Mansoor Ali Khan*, (2000) 7 SCC 529, the Apex Court propounded the "useless formality

theory and followed the law as laid down in the case of *S.L. Kapoor* (supra) and in paragraphs 23 and 35 observed as under:-

23. Chinnappa Reddy, J. in *S.L. Kapoor* case laid down two exceptions (at SS p. 395) namely, if upon admitted or indisputable facts only one

conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if

no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural

justice. Of course, this being an exception, great care must be taken in applying this exception.

35. Thus, in our view, in the above peculiar circumstances, the only conclusion that can be drawn is that even if Mr. Mansoor Ali Khan had been

given notice and he had mentioned this fact of job continuance in Libya as a reason that would not have made any difference and would not have

been treated as a satisfactory explanation under Rule 5(8)(i). Thus, on the admitted or undisputed facts, only one view was possible. The case

would fall within the exception noted in S.L. Kapoor case. We, therefore, hold that no prejudice has been caused to the officer for want of notice

under Rule 5(8)(i). We hold against Mr. Mansoor Ali Khan under Point 5.

50. In Ashok Kumar Sonkar v. Union of India & Ors., (2007) 4 SCC 54, the Apex Court has held as under:-

A court of law does not insist on compliance with a useless formality. It will not issue any such direction where the result would remain the same,

in view of fact situation prevailing or in terms of legal consequences. This was a case where the appellant before the Apex Court was not qualified

on the cut-off date. Being ineligible to be considered for appointment, it would be a futile exercise to give him an opportunity of being heard.

51. This principle laid down by the Apex Court was further followed in the case of State of Chhattisgarh & Ors. v. Dhirjo Kumar Sengar

(2009) 13 SCC 600.

52. In view of the above, we reject the argument of the learned counsel for the appellant that the order impugned is required to be set aside only

on the ground that the enquiry officer had failed to grant him an opportunity of being heard. However as to what is the relevance of the report shall

be dealt with in the later part of this judgment.

Protection against ouster

53. Counsel for the appellant urged that the appellant be protected against ouster in as much as he had been selected and appointed as Munsiff as

far back as in the year 2000 and therefore, ousting him from service at this belated stage would be highly unfair and inequitable. It was stated that

the vacancy created on account of ouster of the appellant would not be utilized by the private respondent and therefore, it would act to nobody's

benefit if the appellant was removed from service.

54. With a view to deal with this issue, it becomes necessary to trace various pronouncements of the Apex Court on the issue of protection against

ouster.

55. In *State of Maharashtra v. Milind & Ors.*, (2001) 1 SCC 4, a Constitution Bench of the Apex Court was examining whether Halba

Koshti' caste was a sub-tribe within the meaning of Entry 19 of the Scheduled Tribes Order relating to the State of Maharashtra even though it was

not specifically mentioned as such. In the above case, the respondent No. 1, had challenged the order of the Director Social Welfare and the

Additional Tribal Commissioner, which invalidated the caste certificate issued in his favour as belonging to ""Halba"" Scheduled Tribe. On the basis

of the said certificate, respondent No. 1 applied to the Government Medical College for admission to MBBS degree course for the year 1985-86

in the reserved category meant for Scheduled Tribes. His name was included in the merit list.

56. As per the procedure prescribed then, his certificate was sent for verification of the Scrutiny Committee constituted under the Directorate of

Social Welfare, Pune, which concluded that the aforementioned respondent did not belong to ""Halba"" Scheduled Tribe. Consequently, the caste

certificate issued to him was rejected. In appeal, the Appellate Authority recorded a finding that the respondent No. 1 belonged to ""Koshti"" caste

and that he did not belong to ""Halba/Halbi"" Scheduled Tribe. The Appellate Authority, in fact, collected the birth register to trace the caste of the

said respondent.

57. The High Court allowed the petition and quashed the impugned orders inter-alia holding that it was permissible to inquire whether any sub-

division of a tribe was a part and parcel of the tribe mentioned therein and that ""Halba Koshti' is a sub-division of main tribe ""Halba/Halbi"" as per

Entry 19 in the Scheduled Tribes Order applicable to Maharashtra. The order of the High Court was challenged before the Apex Court and while

dealing with the issue, the Apex Court allowed and appeal and set aside the impugned judgment of the High Court but protected the selection of

the respondent No. 1, by observing in paragraph 38 of the judgment as under:-

Respondent No. 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed

the course and maybe he is practicing as a doctor, In this view and at this length of time it is for nobody's benefit to annul his admission. Huge

amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical

course by the admission given to respondent No. 1. If any action is taken against Respondent No. 1, it may lead to depriving the service of a

doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by

him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes

Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard

to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP No. 16372 of 1985 and other related

matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

58. However, in Additional General Manager, Human Resource, BHEL Ltd. v. Suresh Ramkrishna Burde (2007) 5 SCC 336, the

benefit of protection against ouster granted in Milind's case was not extended to the respondent therein. The reason being that the caste certificate

in that case was found to be false and invalid. The distinction between the cases where protection against ouster could be granted or refused was

very succinctly dealt with in Kavita Solunke v. State of Maharashtra & Ors., (2012) 8 SCC 430, wherein the Apex Court in paragraph 15

observed as under:

15 The decision of this Court in State of Maharashtra v. Sanjay K.Nimje (2007) 14 SCC 481, relied upon by learned counsel for the

respondents was distinguished even by V.S. Sirpurkar, J. in Vilas's case. The distinction is primarily in terms whether the candidate seeking

appointment or admission is found guilty of a conduct that would disentitle him/her from claiming any relief under the extraordinary powers of the

Court. This Court found that if a person secures appointment or admission on the basis of false certificate he cannot retain the said benefit obtained

by him/her. The Courts will refuse to exercise their discretionary jurisdiction depending upon the facts and circumstances of each case....

59. Applying the ratio of the aforementioned judgments, it is thus clear that the protection against ouster does not follow as a matter of course only

on account of long continuation in office but would primarily depend upon the facts as to whether any fraudulent or manipulative practices were

resorted to by the official for securing the appointment.

60. We do not wish to make any comment on the material, which has been collected by the enquiry officer at this stage inasmuch we have already

held that the enquiry was only a fact finding enquiry where certain materials have been alluded to by the enquiry officer to suggest the benefit of

reservation had been obtained by the petitioner even when he was legally not entitled to the same.

61. The learned Single Judge in the judgment and order impugned has highlighted the statements made by some of the witnesses, who are

examined by the enquiry officer as under:

According to Mohammad Sadeeq Ganie, Chowkidar, none namely Muhammad Yousuf Allai, resides or ever resided within his Chowkidar,

including Village, Rakhshilvat. Ch. Hussain, the Lumberdar of Village Rakhshilvat, too has clearly stated that neither he had ever seen the person,

namely, Muhammad Yousuf Allai nor any such person resides in Village Rakhshilvat. Patwari, Abdul Gani Baba has also stated that Muhammad

Yousuf Allai had not resided in village Rakhshilvat when he was posted as Patwari of that Village....

....The Patwari, while referring to Choola Register of village, Rakhshilvat, has also categorically stated that no Choola in the name of Muhammad

Yousuf Allai ever existed or exists in the register. The respondent. Mr. Allai in his writ as also with the objection to the other writ has produced a

photocopy each of a certificate dated 20.05.96 issued by Chowkidar of village Rakhshilvat, Sadiq Ganai, certifying that the respondent is a

permanent resident of that village and his Choola is entered at Serial No. 334. However, in his deposition before this commission the Chowkidar,

while referring to this certificate, has categorically denied to have issued such certificate and has stated that Mr. Ali Rather, who is a big man of the

Illaq, had approached him for a Choola certificate for his son and had obtained his signature on a written document. Saying that he is an illiterate

person, the Chowkidar has also stated that he signed the certificate under the impression that the same was issued for the son of Ali Rather.

Circumstances surrounding its issuance notwithstanding, the certificate issued by/the Patwari is contrary to the concerned register, which alone is

the public document, and therefore, should not be relied upon...."" (Para 16)

.....The other instances quoted by the respondent are the issuance of PRC in his favour, showing him to be a resident of Village, Rakhshilvat and

the migration certificate dated 21.02.1982 issued by Tehsildar Pattan. A photocopy each of this PRC is annexed with petition in SWP No. 1755,

as Annexure-E and objections in SWP No. 973 as Annexure R-3. It shows to have been issued by the Dy. Commissioner, Baramulla in the year

1995. A photocopy each of the migration certificate is also annexed as Annexure-C and Annexure R-10 respectively. It shows to have been

issued by Tehsildar, Pattan. Nature and value of these two documents would be considered after determination of the questions of fact framed

above."" (Para 19)

...In para 9 (iv) of his petition, the petitioner has contended that in the year 1981 the respondent had obtained PRC from the office of Dy.

Commissioner, Baramulla, showing him to be a resident of Village Mirgund, Tehsil Pattan. Its copy is annexed as Annexure-8. He passed his

matric examination from Jammu & Kashmir Board of School Education (BOSE), where his permanent address is recorded as village, Mirgund,

Tehsil Pattan..."" (Para 20)

...Later he joined service with the same board and in his service record also he is recorded as a resident of Village, Mirgund, Pattan The petitioner

has also contended that the respondent joined LL.B. Course in Kashmir University showing he to be a resident of Village Mirgund. He got

enrolled himself as an advocate with High Court of Jammu & Kashmir and also appeared in KCS (Judicial) Examinations held in the year 1994 &

1996, again showing he to be a resident of Village, Mirgund..."" (Para 21)

...Mr. Mukhtar Ahmed Jallu, Law Officer, BOSE, Srinagar had produced relevant record before this commission on 09.10.03, when his

statement was recorded. His statement shows that Mr. Muhammad Yousuf Allai had applied in prescribed form for admission to the Board

Examination for the year 1977. In that application (EXPMJ) he had given his permanent home address as Mirgund, Narbal, Kashmir. In the year

1997, respondent had taken employment in the same Board as Legal Assistant when he had shown himself to be a resident of Zanakote,

Srinagar...."" (Para 22)

...Mr. Mohammad Latief Khan, Assistant Registrar, High Court of J&K, Main Wing, whose statement was recorded on 08.12.03, has produced

record pertaining to Mr. Muhammad Yousuf Allai's enrolment as advocate and that pertaining to his appointment as Oath Commissioner. Mr.

Muhammad Yousuf Allai had applied for enrolment as advocate with Bar Council of Jammu and Kashmir in June 1.990. In his application for such

enrolment he had given his permanent address as ""R/o Mirgund (Pattan) P/o Mirgund (Pattan)"". The record also contains a copy of PRC issued by

Dy. Commissioner, Baramulla in the year 1981 and character certificate issued by Dean of Students Welfare, the University of Kashmir on

03.05.90. In both these documents Mr. Allai is shown as a resident of Village, Mirgund, Tehsil, Pattan. Mr. Allai was first enrolled provisionally as

advocate for two years vide Notification No. 133, dated 10.02.93. In both these notifications, he is shown as a resident of village, Mirgund,

Pattan...."" (Para 23)

....Mr. Muhammad Yousuf Allai applied for appointment as Oath Commissioner vide his application dated 14. - .92. In this application also he

has shown his address as R/o Mirgund, P/o Mirgund Pattan...."" (Para 24)

....Mr. Mushtaq Ahmed, Head Assistant, J&K Public Service Commission had produced record pertaining to Mr. Muhammad Yousuf Allai's

admission to KCS (Judicial) Examination 1996. The record contains application in prescribed form, submitted by Mr. Muhammad Yousuf Allai. In

this application he has shown his postal and permanent address as R/o and P/o Mirgund (Pattan). The record also contains attendance sheet in

which his permanent as well as postal address is shown as R/o and P/o Mirgund (Pattan). Record also contains a copy of PRC of Mr. Allai which

is similar as that furnished with application for enrolment as advocate i.e., issued by Dy. Commissioner, Baramulla in the year 1981, showing him

as a resident of Village, Mirgund. Mr. Mushtaq Ahmed has also stated, which gets confirmation from the record, that in all the communications

addressed by the candidate to the Public Service Commission and by the Public Service Commission to the candidate in connection with the

examination, address of the candidate is recorded as Mirgund, Pattan....."" (Para 25)

....In his statement before this Commission Syed Mohammad Yasin has stated that in the year 1996 he was posted as Tehsildar, Agrarian

Reforms Sumbal Sonawari and remained so for four years. This Tehsil comprises of three Nayabats (circles) namely, Shadipora, Hajin and

Sumbal. His territorial jurisdiction as Tehsildar Agrarian Reforms extended to Shadipora and Hajin circles whereas the Sumbal circle was under

the jurisdiction of territorial Tehsildar, even for Agrarian Reforms matter. Village, Rakhshilvat was not covered under his territorial jurisdiction. He

has admitted that he had issued the RBA certificate in favour of Mr. Muhammad Yousuf Allai and had also recommended issuance of PRC in his

favour. He has admitted that authority to enquire and issue RBA certificates under SRO 126 lies with territorial Tehsildar only and no other

certificate under that SRO was issued by him. He had enquired into and issued RBA certificate in favour of Mr. Muhammad Yousuf Allai

underwritten authority given to him by the then Deputy Commissioner, Baramulla, Mr. Atul Dullo. Dilating the point he has stated that the ten

territorial Tehsildar. Mr. Mohammad Amin Khan, had requested Mr. Dullo that he being preoccupied, application of Mr. Muhammad Yousuf Allai

be entrusted to him. Mr. Dullo in turn first entrusted the application to him verbally but at his insistence issued a written order. As regards issuance

of PRC, he has admitted that power to issue PRCs also lies with territorial Tehsildar but due to heavy schedule of the territorial Tehsildar, Deputy

Commissioner, Baramulla, had authorised him verbally to deal with these cases and he issued hundreds of PRC. Mr. Yasin has further stated that

the RBA certificate was issued by him under file No. 38/96 and the PRC was processed under file No. 384/95. Both these numbers were given

from the Register of territorial Tehsildar and files were also kept in that office ""(Para 29)

.....What is thus, clear from the statement of Syed Mohammad Yasin, is that at the relevant time he was posted as Tehsildar, Agrarian Reforms,

Sumbal Sonawari. His territorial jurisdiction extended only to Shadipora and Hajin circles of that Tehsil. Village Rakhshilvat was not covered under

his territorial jurisdiction even for Agrarian Reforms purpose. In his capacity as Tehsildar Agrarian Reforms, he was not authorised to deal with and

issue RBA certificate under SRO 126 and to process and recommend cases for issuance of PRCs. Even in respect of persons residing within his

territorial jurisdiction i.e., Shadipora and Hajin circles. Only the territorial Tehsildar of the Tehsil was authorised to deal with such cases and issue

RBA certificates. As per him, application for issuance of RBA certificate to Mr. Muhammad Yousuf Allai was entrusted to him by a written order

by the then Deputy Commissioner, Baramulla, Mr. Atul Dullo, he had processed his case for issuance of PRC having been verbally authorised by

the Deputy Commissioner to deal with such cases due to heavy schedule of Territorial Tehsildar ""(Para 30)

...Mr. M. Amin Khan, the then Tehsildar, Sumbal-whom Syed Mohammad Yasin has also named in his statement has stated that enquiry

regarding issuance of PRCs and RBA certificate fell exclusively within the jurisdiction of territorial Tehsildar, Syed Mohammad Yasin, who was

posted as Tehsildar, Agrarian Reforms, had no authority to process or issue PRC or RBA certificate, not only because he could not as Tehsildar

Agrarian Reforms deal with such matters but also because Village, Rakhshilvat fell outside his jurisdiction. He has further stated that no higher

authority/officer had in his presence, verbally or in writing, empowered Syed Mohammad Yasin to process or issue PRC or RBA certificate in

favour of Mr. Muhammad Yousuf Allai or any other person. Any such claim made by Syed Mohammad Yasin is not correct...."" (Para 31)

....Syed Mohammad Yasin, who was posted as Tehsildar, Agrarian Reforms, was neither competent nor authorised and did not even had the

territorial jurisdiction to issue the RBA certificate dated 30.12.96 in favour of the respondents while issuing this certificate, he had falsely

designated himself as the ""Authorised Officer"". The certificate, therefore, besides being contrary to factual position, is a sham document, issued by

a person without jurisdiction. Also it does not appear that Syed Mohammad Yasin was authorised to process or recommend the cases for

issuance of PRCs. The migration certificate dated 21.10.82 (para 18) in face of above factual position also appears to be a sham document...

(Para 34)

62. In addition to this, the enquiry officer in paragraphs 26 and 34 has held as under:

26. From the undisputed instances quoted by the petitioner and on consideration of the material collected by this commission, as discussed above,

safe and sure conclusion that is arrived at is that neither in the year 1977 nor any time after that, the respondent, Muhammad Yousuf Allai, had

migrated to village, Rakhshilvat from village, Mirgund and resided there. On the other hand, there is no doubt in believing that all along he

continued to be a resident of his birth place, village, Mirgund. Right up to the year, 1996, when he applied for admission to K.C.S. (Judicial)

examination, the respondent had been disclosing himself, and rightly so, as a resident of village, Mirgund. In the meantime in the year 1981, he had

even obtained a Permanent Resident Certificate (PRC) from Dy. Commissioner, Baramulla, in which also he is shown a resident of village,

Mirgund.

34. Syed Mohammad Yasin, who was posted as Tehsildar, Agrarian Reforms, was neither competent nor authorised and did not even had the

territorial jurisdiction to issue the RBA certificate dated 30.12.1996 in favour of the respondents while issuing this certificate, he had falsely

designated himself as the ""Authorised Officer"". The certificate, therefore, besides being contrary to factual position, is a sham document, issued by

a person without jurisdiction. Also it does not appear that Syed Mohammad Yasin was authorised to process or recommend the cases of issuance

of PRCs. The migration certificate dated 21.10.1982 (para-18) in face of above factual position also appears to be sham document.

63. However, in view of the material collected during the enquiry proceedings and alluded to by the enquiry officer, we feel that the appellant may

not be legally justified in claiming 'protection against ouster' in view of the settled legal position as discussed herein above, only on account of long

continuance in service. The report of the Registrar Vigilance, we feel, is relevant only for purposes of enabling us to refuse to exercise jurisdiction

for granting protection against ouster.

On Res Judicata/Constructive Res Judicata

64. One of the main grounds urged by the learned counsel at the time of hearing was that the writ court could not. have started any enquiry yet

again with regard to the validity or correctness of the certificate or the appointment of the appellant based thereupon in view of the fact that a

similar challenge thrown to the selection and appointment of the appellant by one Gh. Rasool Gadda, SWP No. 1724 of 1999, had been rejected.

It was stated that even in that case it has been alleged that the appellant having appeared as a general category candidate in previous two selections

for the post of Munsiffs could not have been selected in the RBA category and, therefore, the fraud was implicit in the action of the appellant

obtained the RBA certificate.

It was further urged that aforementioned judgment was challenged before the Apex Court which upheld the view of the division bench vide order

dated 03.02.2012 and therefore, the issue having attained finality could not have been re-opened yet again on the principle of res

judicata/constructive res judicata.

65. From a perusal of the judgment and order dated 29.09.2009, it is clear that the court did not go into the question of validity of the certificate

issued in favour of the appellant (Respondent No. 5 in that petition) in view of the fact that the officer, who had issued the certificate had not been

made a party to the writ petition.

66. What was held by the Division Bench is reproduced as under:

...It was also contended that respondent No. 5 appeared in the Open Merit Category in the previous similar selection process, but appeared in

the Category reserved for candidates belonging to Backward Area while participating in the subject selection process. It was contended that

Respondent No. 5 thus played fraud. The Officer who issued the certificate in favour of Respondent No. 5, upon which the said respondent

staked his claim for the vacancy reserved for Backward Area candidates, was not made a party to the writ petition. There is, thus, no scope of

going into the question whether the said certificate was or was not a valid certificate and, accordingly, whether Respondent No. 5 took recourse to

fraud while offering himself as a candidate belonging to Backward Area Category. A person, who belongs to Backward Area Category, belongs

to said category from the day he is born, but acceptance thereof depends upon a certificate to that effect being issued by the competent authority.

Untill such a certificate is issued, despite the person belonging to Backward Area Category cannot stake his claim as a Backward Area

candidate...

67. Undoubtedly in Riaz Ahmed Gadda's case, both the appellant as also Javed Ahmed Geelani were party respondents. In fact, there was no

decision at all by the Division Bench as regards the validity of the certificate or any fraudulent practices adopted by the appellant (Respondent No.

5 in the said petition). There was, thus, no decision at all with regard to the aforementioned two issues, which the court refused to go into.

68. Section 11 of the Civil Procedure Code embodies the principle of res judicata and envisages that no court shall try any suit or issue in which

the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties

under whom they or any of them claim litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue

has been subsequently raised, and has been heard and finally decided by such court.

Explanation 4 embodies the principle of constructive res judicata and envisages that any matter which might and ought to have been made ground

of defence or attach in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

69. The principles underlying Section 11 are that there should be finality in litigation and that a person should not be vexed twice over in respect of

the same matter. The basic principle of res judicata has emanated from the maxim ""nemo debet bis vexari pro una et eadem causa"".

70. It is no longer res integra that even when the provisions of civil procedure code are not applicable to writ proceedings in terms, the procedure

prescribed therein, as far as it can be made applicable, is followed by the court in disposing of writ petitions. (Sarguja Transport Service v.

State Transport Appellate Tribunal, M.P., Gwalior & Ors., (1987) 1 SCC 5 and Direct Recruit Class II Engineering

Officers' Association v. State of Maharashtra & Ors., (1990) 2 SCC 715).

71. Equally settled is the principle that the plea of res judicata is not one which affects the jurisdiction of a court but is a plea in bar which a party

may waive. The only exception to the said principle is that it will operate to the detriment or impairment of a fundamental right. (Ashok Kumar

Srivastav v. National Insurance Company Ltd., & Ors., (1998) 4 SCC 361).

72. Further it is settled that a dismissal on laches or dismissal on account of availability of an alternate remedy would not attract the principle of res

judicata (Pujari Bai v. Madan Gupta, AIR 1989 SC 1764).

73. From a bare perusal of the provisions of Section 11, it can be seen that the condition precedent for attracting the aforementioned principles of

res judicata are that there has to be a decision by the court.

74. From a perusal of the judgment of the Division Bench in Gadda's case, it is quite clear that there was no decision at all with regard to the

validity of the certificate obtained by the appellant or with regard to the fraud allegedly practised by him. The court had simply refused to go into

that question in the absence of a proper party i.e., the officer, who had issued the certificate in question.

75. Another thing which needs to be highlighted is the fact that in Gadda's case, both the appellant and Javed Ahmed Geelani were respondents

among the 49 others, whose selection had been challenged by him.

76. The issue with regard to the validity of the certificate possessed by the appellant was an issue between the petitioner in that writ petition and the

respondent No. 5, appellant herein. It was not an issue at all between the co-respondent i.e., the appellant and Javed Ahmed Geelani.

77. It has not been brought to our notice that Javed Ahmed Geelani had expressed any conflict of interest in his objections to the writ petition in

Gadda's case where he himself was one of the respondents along with the appellant.

78. With a view to constitute res judicata amongst co-respondents, it was necessary that there ought to have been a decision first to resolve a conflict between the co-respondents, which would be then binding on one of those respondents in future.

Thus, in the absence of any such decision, neither the principles of constructive res judicata nor res judicata are attracted to the facts and circumstances of the present case.

Acquiescence and consent

79. It was urged by learned counsel for the appellant that the action of the writ court in ordering an enquiry was without jurisdiction inasmuch as the enquiry had to be conducted only in accordance with the procedure prescribed under SRO 126. Emphasis was laid on the principle that if law required a particular thing to be done in a particular manner then it had to be done in that manner or not at all.

80. It was further stated that consent even if given to the enquiry by the Registrar Vigilance could not confer jurisdiction on the court inasmuch parties by acquiescence or consent can never confer jurisdiction when there exists none.

81. Reliance was placed upon a Division Bench judgment of this court in Dr. Irfan Rasool Gadda v. State of J&K & Ors., 2005 (3) JKJ 270 [HC].

82. We are faced with a peculiar situation in this case, on the one hand, we have the report from the Registrar Vigilance, which is against the appellant, which enquiry was ordered on the basis of a consent recorded by the writ court, which order was even upheld by a Division Bench of this court in appeal.

One may say that the issue with regard to conduct a fact finding enquiry has attained finality. However, what has to be seen is whether based upon such a fact finding enquiry, the certificate of RBA possessed by the appellant can be cancelled by the High Court and if not, whether any

administrative action can be ordered by the Full Court based only upon such a fact finding enquiry.

83. In our view, it would indeed be an anachronism if the court were to proceed against the appellant administratively in the face of the existence of

the certificate of RBA purported to have been issued in accordance with the procedures prescribed under SRO 126. Since admittedly, the enquiry

by the Registrar Vigilance was a fact finding enquiry, the court would necessarily have to order a regular enquiry and then go into the entire gamut

once again, which we feel is totally avoidable as the High Court would then be required to determine itself whether the appellant has acquired a

right in terms of SRO 126 and whether at all the appellant had resided at Rakhsahilvat for a period of 15 years.

84. Private parties by consent can never be permitted to usurp the statutory powers vested in a statutory authority like the one prescribed under

SRO 126, according to which, the appellate authority has been given the power to exercise revisional jurisdiction in terms of Rule 32 of the Jammu

and Kashmir Reservation Rules, 1991.

85. We cannot persuade to take a view different from the one taken by a Division Bench of this Court in *Dr. Irfan Rasool Gadda v. State of*

J&K & Ors., 2005 (3) JKJ 270 [HC] wherein in paragraph 99, a Division Bench of this court held as under:

99. Public Service Commission as selection body has to rely upon the certificate as issued by the competent authority. If any of the selectees has

procured the category certificate to secure selection by mis-representation of facts or fraudulently, the remedy available to the aggrieved person is

to approach the competent authority for cancellation of the certificate in terms of SRO 126 of 1994 and neither the writ Court nor the Letters

Patent Bench can go into this question as it would involve investigation of facts and may also require evidence. It is only the competent authority

vested with the power to cancel the certificate which is entitled to examine and pass appropriate orders....

86. In *R. Kandasamy v. Chief Engineer, Madras Port Trust*, (1997) 7 SCC 505, the Apex Court held that a community certificate issued to

a scheduled tribe candidate was good and valid for all purposes till it was cancelled.

87. The aforementioned view was followed by a Division bench of the Madras High Court in *Tamil Nadu Public Service Commission v. R.*

Manikandan Be & Anr., (2012) 1 JCR 258, wherein it was held as under:

6. In our opinion, the stand of the Public Service Commission cannot be accepted and is totally unjustified. When the certificate is issued by the

competent authority to a person or individual it should be presumed to be valid till such time it is cancelled by the competent authority in the manner

known to law. This law has been laid down by the Apex Court in the judgment *R. Kandasamy v. Chief Engineer, Madras Port Trust*, (1997)

7 SCC 505 and the said law holds the field as of now.

88. We, therefore, hold that the fact finding enquiry was totally inconsequential and the same could not have formed a basis for any administrative

action against the appellant.

89. Having given our thoughtful consideration to the facts of the case and the law, we modify the judgment and order impugned with the following

directions:

(i) The Deputy Commissioner, Baramulla shall himself conduct an enquiry with regard to the legality and propriety of the RBA certificate issued in

favour of the appellant to determine as to whether the appellant had the requisite 15 years of residence at Rakhsahilvat prior to the date of

application and was actually residing in the said area in terms of SRO 126.

(ii) Reasonable opportunity of being heard shall be given to the appellant in the matter.

(iii) Respondent No. 1-Javaid Ahmad Geelani in LPA No. 110/2008, is permitted to produce before the Deputy Commissioner, Baramulla all

such material as he may deem fit to prove that the appellant was not entitled to any such benefit.

(iv) The enquiry shall be completed positively within a period of three months from today. On the conclusion of the enquiry, appropriate orders shall be passed.

(v) The order of the Deputy Commissioner, Baramulla shall be forwarded to the Registrar General of this court, who shall place the same before Lord Chief Justice for appropriate orders.

(vi) The Deputy Commissioner shall ensure that no dilatory tactics succeed, which may obstruct him in submitting his report and passing the order within the time prescribed.

(vii) Till the conclusion of the enquiry of the Deputy Commissioner, Baramulla, the appellant shall not be assigned any judicial work but may be assigned such alternate work as may not be connected with any judicial function.

(viii) The issue of registration of a criminal case shall depend upon the decision of the Full Court based upon the outcome of the enquiry of the Deputy Commissioner.

90. Disposed of accordingly. However, the matter shall be listed after three months only for submission of the report by the Deputy Commissioner.

91. List after three months.