CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH AT BANGALORE

MISCELLANEOUS APPLICATION NO.170/00605/2019
IN
ORIGINAL APPLICATION NO.170/00238/2018

DATED THIS THE 3RD DAY OF DECEMBER, 2019

HON'BLE DR K B SURESH….MEMBER (J)
HON'BLE SHRI C V SANKAR …..MEMBER (A)

Shri Inturi Rama Rao,
S/o Late Inturi Subba Rao,
Aged 52 years,
Occ: Accountant Member,
Income Tax Appellate Tribunal,
Second & Third Floor,
Golden Jubilee Building,
F.K.C.C.I., Kempegowda Road,
Bangalore – 560 009

Residing at:
Flat No. 604, Block-1,
Nagarjuna Meadows,
Phase II, Doddaballapura Main Road,
Yelahanka, Bengaluru – 560 064

…Applicant

(By Advocate Shri.B N.Suresh Babu)

Vs.

1. Government of India,
Ministry of Law & Justice,
Department of Legal Affairs,
4th Floor, A-Wing, Shastri Bhawan,
New Delhi, Delhi – 110 001
Represented by its Secretary

2. The President,
Income Tax Appellate Tribunal,
11th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi – 110 003
New Delhi

3. The Department of Personnel & Training,
Government of India,
North Block, Central Secretariat,
New Delhi – 110 001.
Rep. by its Secretary

…Respondents

(By Advocate Shri.V N.Holla, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE DR K B SURESH, MEMBER (J)

Heard. The respondents produces an order of the Hon'ble Apex Court in the Hemani Malhotra Vs. High court of Delhi and another case reported in (2008) 7 SCC 11, we quote from it:

> ***J.M. PANCHAL, J.***
>
> *1. These petitions are filed under Article 32 of the Constitution wherein the common prayer made, is to issue a writ of mandamus or any other appropriate writ or order to direct the respondent i.e. the High Court of Delhi at New Delhi to amend notice dated April 10, 2007 issued by Registrar (Vig.), High Court of Delhi to the effect that the petitioner of each petition, is also declared as selected for being recommended for appointment to the vacant post in Delhi Higher Judicial Service and prepare a combined merit list on the basis of total marks obtained in written examination as well as proportionate marks of the interview, as if, the vive- voce test was of 75 marks instead of 750 marks or by adding marks obtained in written examination and the marks given to the petitioner in the interview out of 750 marks without cut off.*
>
> *2. In order to resolve the controversy raised by the petitioners in the petitions it would be advantageous to refer to certain basic facts.*
>
> *3. The respondent i.e. the High Court of Delhi at New Delhi through Registrar General issued an advertisement inviting applications from eligible candidates for 16 vacant posts to be filled up by direct recruitment to Delhi Higher Judicial Service. Detailed information was given in the instructions annexed with the Application Form. The relevant particulars stated in the advertisement were as under:-*
>
> > *"Delhi Higher Judicial Service Examination shall be a two stage selection process comprising the following:*
> >
> > *(a) There shall be a written examination comprising of one paper only of 250 marks. It shall have two parts. Part I shall be*

objective and Part II shall be descriptive. Syllabus for written examination shall comprise General Knowledge, Current Affairs, English Language and topics on Constitution of India, Evidence Act, Limitation Act, Code of Civil Procedure, Criminal Procedure Code, Indian Penal Code, Contract Act, Partnership Act, Principles governing Arbitration Law, Specific Relief Act, Hindu Marriage Act, Hindu Succession Act, Transfer or Property Act and Negotiable Instrument Act.

(b) Interview/Viva-Voce.

Minimum qualifying marks in the written examination shall be 55% for General Candidates and 50% for Scheduled Castes and Scheduled Tribes candidates."

4. The petitioner of each petition submitted application in the prescribed form. They were allotted relevant Roll Nos. A written examination was conducted on March 12, 2006 wherein the petitioners appeared. The written examination was of three hours duration and comprised both multiple questions as well as questions with descriptive answers. The respondent High Court did not declare the result of the written examination at all. However, the petitioners received letter dated June 14, 2006 from the respondent asking them to appear for interview on July 12, 2006. Since the result of the written examination conducted by the respondent was not declared, no merit list of the successful candidates who passed the written test was displayed and therefore it is the case of the petitioners that they were not in a position to find out details about the number of candidates who were declared successful in the written examination or for that matter, the number of candidates who had qualified for viva- voce test.

5. According to the petitioners, the Registrar General of Delhi High Court verified testimonials and other documents submitted by them and informed them that the interview had been deferred and that the next date would be intimated in due course. What is averred by the petitioners is that the respondent issued letter dated September 4, 2006 directing the petitioners to appear for interview on September 20, 2006 at 2.30 P.M., but on September 19, 2006 another letter was issued intimating the petitioners that the interview fixed on September 20, 2006 was deferred. It may be mentioned that no next date of interview was intimated to the petitioners. The respondent High Court issued letter dated November 9, 2006 intimating the petitioners that the interview was fixed on November 29, 2006, but again on November 28, 2006, another letter was issued intimating the petitioners that the interview fixed November 29, 2006 was deferred. This last letter of November 28, 2006 specified that the interviews were to take place on December 7, 2006. According to the petitioners on December 7, 2006 five candidates who had cleared written test gathered in the Office of Registrar General of Delhi High Court for appearing at viva- voce test and all the five candidates were collectively called in a Chamber by the Selection

Committee comprising five Hon'ble Judges of Delhi High Court to be informed that the interview had been postponed.

6. Meanwhile, the Selection Committee met and resolved that as it was desirable to prescribe minimum marks for the viva-voce the matter be placed before the Full Court. Accordingly, the matter was placed before the Full Court for considering the question whether minimum marks should be prescribed for vive-voce test. The Full Court, in its meeting held on December 13, 2006, resolved as under:-

> *"Considered. It was resolved that for recruitment to Delhi Higher Judicial Service from Bar, the minimum qualifying marks in viva-voce will be 55% for General candidates and 50% for Scheduled Castes and Scheduled Tribes Candidates."*

7. The respondent High Court thereafter issued letter dated January 17, 2007 intimating the petitioners that the vive-voce was fixed on January 23, 2007, but on January 22, 2007 another letter was issued intimating that the interview fixed on January 23, 2007 was postponed. Again by letter dated February 2, 2007 the petitioners were intimated that they were required to appear for interview on February 5, 2007, but even on that day also, no interview could be held.

8. The respondent High Court issued letter dated February 23, 2007 fixing the oral interview on February 27, 2007 and on that day viva- voce test was finally conducted by the Selection Committee. Thereafter, the Registrar (Vig.) issued a notice dated April 10, 2007 mentioning that only three candidates were selected and the petitioners had not been selected. This notice was posted on the web-site of Delhi High Court. What is claimed by the petitioners is that the Selection Committee had not drawn final merit list on the basis of combined result of written examination and interview because if the merit list had been drawn on this basis, the petitioners would have obtained fourth or fifth position in the final merit list as only five candidates had qualified for the viva- voce test, and no cut-off marks were prescribed for viva- voce test.

9. The petitioners claim that they filed an application under Right to Information Act before the Public Information Officer of High Court of Delhi on April 28, 2007 seeking information about the result etc. of Delhi Higher Judicial Service Examination 2006. According to the petitioners the Public Information Officer of the High Court did not supply most of the information demanded by them on the pretext of confidentiality, but in reply dated June 20, 2007 only a part of the information was given to the petitioner in Writ Petition No. 490 if 2007 that out of 250 marks for which written test was conducted, she had secured 141 marks and 363 marks out of 750 marks for which viva- voce test, was conducted. The petitioner in Writ Petition Civil No. 491 of 2007 was informed by intimation dated June 20, 2007 that she had obtained 153.50 marks out of 250 marks for which written test was conducted and 316 marks out of 750 marks for which viva- voce test was conducted.

10. What is maintained by the petitioners is that the petitioners have been excluded from being considered for appointment to the post of Higher Judicial Services exclusively on the basis of cut off marks prescribed at the stage of viva- voce test, which is illegal and contrary to the principle laid down by the Supreme Court in Lila Dhar vs. State of Rajasthan AIR 1981 SC 1777. According to the petitioners what weightage should be attached to written test and interview depends upon the requirement of service for which selection is being made, but minimum cut off marks could not have been prescribed for viva- voce test, after process for selection had commenced. It is stressed that the oral interview was the only criteria adopted by the respondent for selection to the posts in question which is illegal and therefore the notice dated April 10, 2007 issued by the Registrar (Vig.), High Court of Delhi should be directed to be amended to include names of the petitioners also as selected candidates for appointment to the posts in question. Under the circumstances the petitioners have invoked extra ordinary jurisdiction of this Court under Article 32 of the Constitution and claimed the reliefs to which reference is made earlier.

11. On service of notice, Mr. Ramesh Chand, Deputy Registrar, Delhi High Court has filed reply affidavit controverting the averments made in the petition. In the reply it is stated that the writ petitions filed against prescription of minimum percentage of marks for qualifying at the viva-voce test, is not maintainable and therefore should be dismissed. It is mentioned in the reply that as far as selection made in the year 2000 was concerned, a candidate was required to get minimum of 55% marks if he belonged to the General Category and 50% marks if he belonged to the Scheduled Castes and Scheduled Tribes category for passing the vive-voce test and as the petitioners who belong to the General Category did not secure the minimum marks stipulated for the vive-voce, but failed, their names were not recommended for appointment. It is mentioned in the reply that another advertisement dated May 19, 2007 was issued for recruitment to the vacant posts in the Delhi Higher Judicial Service wherein the petitioners had appeared but failed and therefore also they are not entitled to the reliefs claimed in the petitions. What is pointed out in the reply is that a candidate is required to secure the stipulated minimum marks in the written examination in order to qualify for the next stage i.e. vive-voce test and therefore the respondent was justified in prescribing cut off marks at the vive-voce test. By filing the reply the respondent has demanded dismissal of the petitions.

12. This Court has heard the learned Counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the petitions.

13. From the record of the case it is evident that the public advertisement was issued by the respondent for direct recruitment to Delhi Higher Judicial Services. As per the said advertisement written

examination was to be held on March 12, 2006. The selection process was of two stages: stage one was written examination comprising one paper only of 250 marks, whereas stage two included interview/vive-voce. As per the advertisement minimum qualifying marks in the written examination were specified to be 55% for General candidates and 50% for Scheduled Castes and Scheduled Tribes candidates but no cut off marks were prescribed for vive-voce test at all. The averments made in the petitions which are not effectively controverted by the respondent would indicate that oral interview was postponed by the respondent on six occasions and was finally conducted by the Selection Committee only on February 27, 2007. However, before that date criteria of cut off marks for vive-voce test was introduced by the respondent.

14. It is an admitted position that at the beginning of the selection process, no minimum cut off marks for vive-voce were prescribed for Delhi Higher Judicial Service Examination, 2006. The question, therefore, which arises for consideration of the Court is whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed would amount to changing the rules of the game after the game was played. This Court notices that in K.Manjusree v. State of A.P. the question posed for consideration of this Court in the instant petitions was considered and answered in the following terms:- (SCC pp. 526-27, para 33)

> *"33. The Resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."*

From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for vive-voce. Therefore, prescribing minimum marks for vive-voce was not permissible at all after written test was conducted.

15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal.

16. The contention raised by the learned Counsel for the respondent that the decision rendered in K.Manjusree (Supra) did not notice the decisions in Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417 as well as K.H.Siraj v. High Court of Kerala and Others (2006) 6 SCC 395 and therefore should be regarded either as decision per incuriam or should be referred to Larger Bench for reconsideration, cannot be accepted. What is laid down in the decisions relied upon by the learned Counsel for the respondent is that it is always open to the authority making the rules regulating the selection to prescribe the minimum marks both for written examination and interview. The question whether introduction of the requirement of minimum marks for interview after the entire selection process was completed was valid or nor, never fell for consideration of this Court in the decisions referred to by the learned Counsel for the respondent. While deciding the case of K.Manjusree the Court noticed the decisions in (1) P.K.Ramachandra Iyer v. Union of India (1984) 2 SCC 141; (2) Umesh Chandra Shukla v. Union of India (1985) 3 SCC 721; and (3) Durgacharan Misra v. State of Orissa (1987) 4 SCC 646, and has thereafter laid down the proposition of law which is quoted above. On the facts and in the circumstances of the case this Court is of the opinion that the decision rendered by this Court in K.Manjusree (Supra) can neither be regarded as Judgment per incuriam nor good case is made out by the respondent for referring the matter to the Larger Bench for reconsidering the said decision.

17. At this stage this Court notices that as per the information supplied by the respondent to the petitioners under the provisions of Right to Information Act, the petitioner in Writ Petition Civil No. 490/2007 had secured 142 marks out of 250 prescribed for the written test and 363 marks out of 750 marks in vive-voce test, whereas the petitioner in Writ Petition No. 491/2007 had secured 153.50 marks out of 250 marks in the written test and 316 marks out of 750 marks in vive-voce test. There is no manner of doubt that the prescription of 750 marks for vive-voce

test is on higher side. This Court further notices that Hon'ble Justice Shetty Commission has recommended in its Report that:

> *"The vive- voce test should be in a thorough and scientific manner and it should be taken anything between 25 to 30 minutes for each candidate. What is recommended by the Commission is that the vive-voce test shall carry 50 marks and there shall be no cut off marks in vive-voce test."*

18. This Court notices that in All- India Judges Association and ors. V. Union of India and Ors. (2002) 4 SCC 247, subject to the various modifications indicated in the said decision, the other recommendations of the Shetty Commission (supra) were accepted by this Court. It means that prescription of cut off marks at vive-voce test by the respondent was not in accordance with the decision of this Court. It is an admitted position that both the petitioners had cleared written examination and therefore after adding marks obtained by them in the written examination to the marks obtained in the vive-voce test, the result of the petitioners should have been declared. As noticed earlier 16 vacant posts were notified to be filled up and only five candidates had cleared the written test. Therefore, if the marks obtained by the petitioners at vive-voce test had been added to the marks obtained by them in the written test then the names of the petitioners would have found place in the merit list prepared by the respondent. Under the circumstances, this Court is of the opinion that the petitions filed by the petitioners will have to be accepted in part.

19. For the foregoing reasons both the petitions succeed. The respondent is directed to add the marks obtained by the petitioners in the written examination to the marks obtained by them in the vive-voce test and prepare a combined merit list along with the other selected candidates. The respondent is directed to amend the notice dated April 10, 2007 issued by the Registrar (Vig.), High Court of Delhi, New Delhi and declare the petitioners as selected for being recommended for appointment to the post in Delhi Higher Judicial Service. It is clarified that the petitioners would neither be entitled to, seniority or salary with retrospective effect. Their seniority shall be reckoned from the date of their appointment and salary as allowable be paid from that date only. Rule is made absolute accordingly in each petition. There shall be no order as to costs."

2. Respondents claim a right to deny a benefit which was actually due to the applicant based on the last paragraph from this judgment. But we have explained with clarity as to why and how applicant was kept from an appointment for reasons best known only to the respondents. Whereas the case in which Hemani Malhotra had filed

is essentially and distinctly different. We have clearly held in our order that applicant has to be considered in the select list of 2007 as he had acquired the right to be selected in that list. For some reason which we do not want to explain now, it is withheld from it. Any sort of fraud will defeat and vitiate any process under law. This is clarified by the **Hon'ble Apex Court in the case of *S.P Chengalvaraya Naidu reported in 1994 AIR 853,*** which we quote:

> *PETITIONER: S.P CHENGALVARAYA NAIDU*
>
> *VS.*
>
> *RESPONDENT: JAGANNATH*
>
> *DATE OF JUDGMENT 27/10/1993*
>
> *BENCH: KULDIP SINGH (J)*
>
> *BENCH:*
> *KULDIP SINGH (J)*
> *SAWANT, P.B.*
>
> *"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.*
>
> *2. Predecessor-in-interest of the respondents-plaintiffs filed application for final decree for partition and separate possession of the plaint-properties and for mesne profits. The appellants-defendants contested the application on the ground that the preliminary decree, which was sought to be made final, was obtained by fraud and, as such, the application was liable to be dismissed. The trial Judge accepted the contention and dismissed the application for grant of final decree. The respondents- plaintiffs went in appeal before the High Court. A Division Bench of the High Court went through plethora of case-law and finally allowed the appeal and set aside the order of the trial court. This appeal is by way of certificate granted by the High Court.*
>
> *3. One Jagannath was the predecessor-in-interest of the respondents. He was working as a clerk with one Chunilal Sowcar. Jagannath purchased at court auction the properties in dispute which belonged to the appellants. Chunilal Sowcar had obtained a decree and the court sale was made in execution of the said decree. Jagannath had purchased the property in the court auction on behalf of Chunilal Sowcar, the decree-holder. By a registered deed dated November 25, 1945, Jagannath relinquished all his*

rights in the property in favour of Chunilal Sowcar. Meanwhile, the appellants who were the judgment-debtors had paid the total decretal amount to Chunilal Sowcar. Thereafter, Chunilal Sowcar, having received the decretal amount, was no longer entitled to the property which he had purchased through Jagannath. Without disclosing that he had executed a release deed in favour of Chunilal Sowcar, Jagannath filed a suit for partition of the property and obtained a preliminary decree. During the pendency of the suit, the appellants did not know that Jagannath had no locus standi to file the suit because he had already executed a registered release deed, relinquishing all his rights in respect of the property in dispute, in favour of Chunilal Sowcar. It was only at the hearing of the application for final decree that the appellants came to know about the release deed and, as such, they challenged the application on the ground that non- disclosure on the part of Jagannath that he was left with no right in the property in dispute, vitiated the proceedings and, as such, the preliminary decree obtained by Jagannath by playing fraud on the court was a nullity. The appellants produced the release deed (Ex. B- 1 5) before the trial court. The relevant part of the release deed is as under:

"Out of your accretions and out of trust vested in me, purchased the schedule mentioned properties benami in my name through court auction and had the said sale confirmed. The said properties are in your possession and enjoyment and the said properties should henceforth be held and enjoyed with all rights by you as had been done:

So far if any civil or criminal proceedings have to be conducted in respect of the said properties or instituted by others in respect of the said properties you shall conduct the said proceedings without reference to me and shall be held liable for the profits or losses you incur thereby. All the records pertaining the aforesaid properties are already remaining with you.

4. The High Court reversed the findings of the trial court on the following reasonings:

"Let us assume for the purpose of argument that this document, Ex. B-15, was of the latter category and the plaintiff, the benamidar, had completely divested himself of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Ex. B-15 would amount to collateral or extrinsic fraud. The utmost that can be said in favour of the defendants is that a plaintiff who had no title (at the time when the suit was filed) to the properties, has falsely asserted title and one of the questions that would arise either expressly or by necessary implication is whether the plaintiff had a subsisting title to the properties. It was up to the defendants, to plead and establish by gathering all the necessary materials, oral and documentary, that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length and it is the duty of each to traverse or question the allegations made by the other and to adduce all available evidence regarding the basis of the

plaintiff's claim or the defence of the defendants and the truth or falsehood concerning the same. A party litigant cannot be indifferent, and negligent in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the Court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified registration copy of Ex. B-15 and non-suited the plaintiff; and, it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence." The High Court further held as under:

"From this decision it follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other cases, there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the fundamental principle of law of finality of litigation enunciated in the maxim 'interest reipublicae ut sit finis litium' if it should be held that a judgment obtained by a plaintiff in a false case, false to his knowledge, could be set aside on the ground of fraud, in a subsequent litigation." Finally, the High Court held as under:

"The principle of this decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when he filed the suit for partition, he had subsisting interest in the property though he had already executed Ex. B-15. Even so, that would not amount to extrinsic fraud because that is a matter which could well have been traversed and established to be false by the appellant by adducing the necessary evidence. The preliminary decree in the partition suit necessarily involves an adjudication though impliedly that the plaintiff has a subsisting interest in the property."

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood,

has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

7. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and restore that of the trial court. The appellants shall be entitled to their costs which we quantify as Rs 11,000.

3. Therefore, the 2007 process has been vitiated by the act of the respondents themselves. After that they cannot turn around and claim that the prejudice should not visit them. At this point, one more issue is raised that the persons in between selected may now face a prejudice but then since persons in the first list of selection will acquire a pre-eminent right, the persons in the second list of selection cannot make a claim under any ground, whatsoever, above that of the first list of the selection. Therefore, applicant will be eligible to be considered in the first list of selection and his seniority and other benefits will be definitely granted to him, except the salary for the period for which he may not have worked. The matter is hereby clarified but we make it clear that he will come just after the last person appointed in the 2007 list and the

seniority to be considered from that point onwards. MA is thus clarified. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/rsh/

Annexures referred in MA No. 170/00605/2019

Annexure-A1: Copy of the order of Central Administrative Tribunal, Bangalore Bench in OA No. 238/2018