

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No. 355/86.

Shri N.Rajasekhar,
Jt. Director,
Industries and Mines,
Panaji, Goa.

... Applicant

V/s.

1. Union of India
(through the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi,),
2. The Administrator of Goa,
Daman and Diu having its
office at Secretariat,
Panaji, Goa,
3. Government of Goa, Daman and Diu
through its Chief Secretary,
Secretariat,
Panaji, Goa,
4. Shri J.M.J.S.Alexandre Gonsalves
Pereira, Director of Social
Welfare, Panaji, Goa.

... Respondents

Coram: Member(A), J.G.Rajadhyaksha

Appearance:

Member(J), M.B.Mujumdar.

Shri S.K.Kakodkar and
Shri Sharma for Applicant.

Respondent Nos.1 to 3
Mr.M.I.Sethna and Subodh Joshi
and for Respondent No.4
Mr.A.S.Rajadhyaksha.

JUDGMENT: (Per M.B.Mujumdar, Member(J)) Dt: 27.10.1986

On the 4th of January, 1985, the applicant
(Original Petitioner) Shri N.Rajasekhar, filed Writ
Petition No.1 of 1985 in the High Court of Judicature
at Bombay, Panaji Bench, under article 226 of the
Constitution of India for quashing certain orders
passed by and on behalf of Respondent No.2, and for
restraining Respondent No.1 and 3 from appointing
Shri J.M.J.S.Alexandre Gonsalves Pereira to the
Indian Administrative Service. The petition was

...2.

admitted by the High Court on 7.1.1985, and an order was passed on 14.8.1986 transferring the case to this Tribunal, under section 29 of the Administrative Tribunals Act, 1985.

2. At the outset it may be pointed out that though the applicant has requested for quashing certain orders, in substance the request is for setting aside the judgment of the Judicial Commissioner of Goa, Daman & Diu (Dr. Gustavo Filipe Couto), (the then acting Judicial Commissioner but at present a Judge of the Bombay High Court) delivered on 12th May, 1982 in Special Civil Application (W.P.) No.46/1981 filed under article 226 of the Constitution of India, by Respondent No.4 Mr. Pereira, because the impugned orders were passed on the basis of that judgment.

3. By an order dated 5.2.1968 the applicant Shri N. Rajasekhar was appointed as a direct recruit to Grade II of the Goa, Daman and Diu Civil Service (Ex. Pl collectively) and he joined service on 14.2.1968. After satisfactory completion of the period of probation, he was confirmed in the same grade from 14.2.1970 (Ex. Pl collectively). By an order passed on 13.9.1976 he was appointed to the Selection Grade of the Goa, Daman and Diu Civil Service in a substantive capacity w.e.f. 25.8.1976.

4. The Respondent No.4 Shri Pereira joined service in the Government of Goa Daman and Diu as third Officer in 1951. In 1958 he was promoted as second Officer and in 1966 he was promoted as first Officer (Chefe de Seccao) in the Directorate of Education. By a memorandum dated 22.6.1966 he was asked to attend an interview for selection of candidates for the post of

Deputy Registrar of the College of Engineering, Goa. Accordingly, he attended the interview on 23.8.1966 which was held by a Selection Committee consisting of the Chief Secretary, the Development Commissioner and the Director of Education. On selection by the Committee he was promoted as Deputy Registrar of the College of Engineering, Goa, by an order dated 24.9.1966. He took charge of that post on 18.10.1966. Thereafter, the Union Public Service Commission invited applications for the said post of Deputy Registrar and though the applicant had protested against that notification, the Union Public Service Commission recommended one Mr.Jai Prakash Mehta for appointment to the said post of Deputy Registrar. Accepting the recommendations, the Government appointed Mr.Mehta to that post, and in consequence reverted Respondent No.4 to his original post of Chefe de Seccao (meaning Chief of the Section) with the Director of Education w.e.f. 7.6.1967. It was on the same date that Mr.Mehta took over as Deputy Registrar of the College of Engineering, Goa. By an order dated 4.9.1968 Mr.Pereira was confirmed in the post of Chefe de Seccao w.e.f. 19.12.1961 Pereira did make one or two representations to the Government against his reversion but with no success.

5. To understand the dispute between the parties it is necessary to refer to some other persons though they are not before us. By a notification dt.1.8.1968, three persons Shri Leao Pinto, Shri V.S.Srinivasagopalan and Shri Vaman Sardessai were appointed to Gr.II of the Goa, Daman and Diu Civil Service at its initial constitution. Before their appointment by the said

notification they were holding Grade II posts on an officiating basis. The seniority list prepared on 20.6.1979 shows the names of the persons concerned as follows:- 1. Shri Vaman Sardessai, 2. Shri Chaman Lal, 3. Shri M.P.Tyagi, 4. Shri Pukh Raj Bumb and 5. Shri N.Rajasekhar.

6. It appears that Pinto and Srinivasagopalan were then not in the service of the Goa Government. The seniority list published on 17.9.1980 shows the names as follows:- 1. Shri Chaman Lal, 2. Shri M.P.Tyagi, 3. Shri Pukh Raj Bumb, 4. Shri Abel do Rosario and 5. Shri N.Rajasekhar.

7. At that time Sardessai was not in the service of the Goa Government because he had already been confirmed as a Member of the Indian Administrative Service.

8. Respondent No.4 Mr.Pereira, it may be noted, was no where in this gradation list but as his representations to the Government against his reversion had failed, he filed Special Civil Application (Writ Petition) No.46 of 1981 in the Court of the Judicial Commissioner, Goa Daman and Diu challenging his reversion order dt. 22.6.1967 under article 226 of the Constitution of India. It may be pointed out here that the Court of Judicial Commissioner of Goa Daman and Diu had all the powers of the High Court as can be seen from the provisions of the Goa, Daman and Diu Judicial Commissioner's Court (Declaration As High Court) Act, 1964.

9. The Goa, Daman and Diu Civil Service Rules, 1967 (briefly, the Rules) were made by the President in exercise of the powers conferred under article 309 of Constitution of India, and were published initially in the Government of India, Ministry of Home Affairs notification dated 1st March, 1967. That was the crucial date so far as the rules were concerned. Rule 3(1) states that on and from the date of the commencement of the rules, there shall be constituted a Central Civil Service known as Goa, Daman and Diu Civil Service. According to sub-rule (2) the service shall have two grades, namely, (i) Grade I (Selection Grade), (ii) Grade II.

10. According to rule 3(3) the posts in Gr.I shall be Central Civil Group 'A' posts and those in Grade II shall be Central Civil Group 'B' posts. Rule 5 provides for the method of recruitment. According to sub-rule (1) thereof, save as provided in rule-17, appointment to the Service shall be made by the two methods mentioned in clauses (a) and (b) of the sub-rule. According to clause (a) not more than 50 per cent of the substantive vacancies which occur from time to time in the authorised permanent strength of the service shall be filled by direct recruitment in the manner specified in Part.IV of the rules. Clause (b) provides that the remaining substantive vacancies shall be filled by selection in the manner specified in Part.V of the rules from amongst (i) officers who hold substantively any of the posts specified in schedule II and (ii) officers who may be considered for appointment to the Service at its

initial constitution, though not actually appointed thereto under rule 17 and who substantively hold (a) any of the posts specified in Schedule I, or (b) any of the posts under the Government carrying the same designation as any of the posts specified in Schedule I. So far as this case is concerned, we are not concerned with any of these modes of recruitment, but we are mainly concerned with the provisions of rule 17 which are regarding initial constitution of service. Again, so far as this case is concerned only sub-rule 1 of rule 17 is important and that rule ~~g~~ reads thus:

"17. Initial appointment of persons to the Service:

(1) The Administrator may, at the commencement of these rules, appoint to the Service any person who at such commencement is holding any of the posts specified in Schedule I or the post of Director of Industries and Mines, or the post of Director Fazenda (Commissioner of Revenue and Taxes) under Government of Goa, Daman and Diu".

(The proviso and explanation to sub-rule and sub-rules 2 & 3 are not quoted as they are not material.)

11. It is necessary to point out that in Schedule I, there are mentioned eleven Gr.I (Selection Grade) posts and twentyfive Gr.II posts. The post of Deputy Registrar of Engineering College, Goa, with which we are concerned is at Sr. No.11 in the list of Gr.II posts.

12. Coming back to the Writ Petition filed in 1981 by Pereira we find it was opposed by Respondents Nos.1 & 2. The affidavit of G.H.Mascarenhas, Under Secretary (Personnel) to the Government of

Goa, Daman and Diu was filed and a copy of that affidavit is filed in this case also. We had some reservations as to whether the contents of the documents should be read in this case because it was filed for the purpose of the writ petition of Pereira. But on the adjourned date of hearing i.e. 6.10.1986, it was conceded by the applicant's advocate Mr. Sharma, and the advocates on behalf of the Respondents that the affidavit could be read in this case also.

12. The main question before the Judicial Commissioner was whether Pereira who was the petitioner in that case and who is Respondent No.4 in this case, was holding the post of Deputy Registrar, Engineering College, Goa, which was a post specified in schedule I of the rules, and if so whether he should have been appointed to Gr.II of the Goa, Daman and Diu Civil Service at its initial constitution as required by rule - 17. After fully hearing the parties, Judicial Commissioner by his judgment dt. 12.5.1982 held that -

- (1) Pereira was holding the post of Deputy Registrar, Engineering College, Goa on an officiating basis at the commencement of the rules i.e. on 1st March, 1967;
- (2) Rule 17(1) of the Rules does not make any distinction between a person holding the post in an officiating, ad hoc or substantive capacity;
- (3) Shri Pinto, Shri Srinivasagopalan and Shri Vaman Sardessai who were holding Gr.II posts on officiating basis at the time of the commencement of the rules were appointed to the said grade at the initial constitution of the service

under Rule 17, and as the cases of these officers were not different from the case of Pereira his non-appointment to the same grade at the initial constitution was discriminatory and hence hit by article 14 of the Constitution of India;

- (4) Pereira ought, therefore, to have been considered for appointment to Gr.II at the initial constitution of the service;
- (5) There was no bar to the appointment of Pereira to Gr.II merely because the Union Public Service Commission had not been consulted.

17. We have summarised the above findings from the judgment of the Judicial Commissioner. It may be pointed out that these findings were not seriously contested on behalf of the respondents to the Writ Petition. However, the Government advocate had submitted that the Writ Petition was liable to be dismissed on account of inordinate delay and laches as the impugned notification and order were passed in 1967, while the petition was filed on 24th February, 1981 i.e. 14 years after the notification and the order. But the submission was rejected by the Judicial Commissioner and he passed the following order in the Writ Petition:

"The petition succeeds, therefore. The rule is such, made absolute and consequently, the impugned order, dated 22nd June, 1967 is quashed and respondent No.1 is directed to consider the case of the petitioner for appointment to Gr.II of the Goa, Daman and Diu Civil Service at its initial constitution with all the consequential reliefs. There will be no order as to costs in the circumstances of the case".

14. No appeal was preferred against the order by the Respondents in that case.

15. Thereafter, the Government passed the following impugned order dt. 27.12.1983:

"Following directions contained in the judgment dated 12th May, 1982 of the Acting Judicial Commissioner, Goa, Daman and Diu, Panaji in respect of Special Civil Application (W.P.) No.46/1981 and on the recommendations of the Selection Committee, the Administrator of Goa, Daman and Diu is pleased to appoint Shri J.M.J.S.Alexandre Gonsalves Pereira, to Grade.II post of the Goa, Daman and Diu Civil Service at its initial constitution under Rule 17 of the Goa, Daman and Diu Civil Service Rules, 1967 with effect from 1st August, 1968 (i.e. the date on which S/Shri Leao Pinto, V.S.Srinivasagopalan and Vaman Sardessai were appointed at the initial constitution vide notification No.CSD/RRVS/39/66 dated 1st August, 1968).

2. Shri Pereira shall stand below Shri Vaman Sardessai, the last Officer who was recommended for appointment to the said service at its initial constitution and appointed vide Notification No.CSD/RRVS/39/66 dated 1st August, 1968.

3. The appointment is made in consultation with the Union Public Service Commission, New Delhi. Shri Pereira shall be on probation for a period of 2 years.

4. In view of this order, promotion of Shri Pereira ordered under order No.3/6/76-PER (Vol.II) (a) dated 19th July, 1983 stands cancelled.

5. Shri Pereira shall continue to hold the present post viz. Director of Social Welfare, until further orders."

16. In pursuance to the above order the other impugned order dt. 4.5.1984 was passed and it is as follows:

"In terms of Rule 23 of the Goa, Daman and Diu Civil Service Rules, 1967, the Administrator of Goa, Daman and Diu is pleased to confirm Shri J.M.J.S.Alexandre Gonsalves Pereira, appointed to Grade II of Goa, Daman and Diu Civil Service vide order cited above, in the Grade II of the service with effect from the 1st August, 1970, by exempting him from appearing for Departmental Examination and also undergoing formal Training in terms of proviso to Rule 22 ibid".

17. The third impugned order dated 20.11.1984 is as follows:

"In terms of Rule 28(ii) of the Goa, Daman and Diu Civil Service Rules, 1967 and in consultation with the Union Public Service Commission the Administrator of Goa, Daman and Diu is pleased to determine ad-hoc seniority of Shri J.M.J.S.Alexandre Gonsalves Pereira appointed to the Goa, Daman and Diu Civil Service at the initial constitution to Grade II post of the service and place him below Shri V.S.Srinivasagopalan whose seniority along with other officers was determined vide order No.SPL/GCS/39/71-Vol.II dated 18.6.1971.

2. Shri Pereira's date of appointment to the post encadred in the service is 18th October, 1966.

3. This issue~~s~~ with concurrence of the Union Public Service Commission, New Delhi as communicated vide their letter No.F.2/32/84-S.II dated 30.10.1984".

18. The last impugned order is dated 17.10.1985 as can be seen from the hand written words at the end of prayer clause (a) of the petition. It is at P.104 of the Compilation of extra papers for circulation & appoints Pereira to Gr.I of the Goa, Daman and Diu Civil Service.

19. It is clear that all the impugned orders were passed by the Respondents 1 to 3 in this case, in pursuance of the findings and directions given in the judgment in the Writ Petition filed by Respondent No.4 Pereira. That is why we are finding that what is really challenged before us is the judgment of the Judicial Commissioner in Special C.A. No.46/1981.

20. We would further point out that one Pukhraj Bumb who is just above the petitioner Rajasekhar in the seniority list had filed Writ Petition No.74/1984 in the High Court of Judicature at Bombay, Panjim Bench. Respondent No.1 Union of India, Respondent No.2 Administrator of Goa, Daman and Diu, Respondent No.4 Pereira and applicant Rajasekhar were parties to that petition. The other persons who were likely to be affected were also made parties. But it appears that without issuing notices to them, the High Court dismissed the petition in limine on 26.6.1984. There were in all 15 respondents in that Writ Petition, and therein Pukhraj Bumb had challenged the judgment of the Judicial Commissioner given in Special C.A. No.46/81 dt. 12.5.1982 and consequent orders passed by the Government. Against the dismissal of the Writ Petition and the judgment of the Judicial Commissioner C.A.No.46/81, Pukhraj Bumb has filed Special Leave Petition (Civil)Nos.10382,10384/84 in the Supreme Court. Copies of this petition are filed in this case and ... 12.

they show that Pukhraj Bumb has challenged the judgment of the High Court dt. 12.5.1982 as it was coming in his way though he was not a party to it. We were told at the Bar that when the appeals came up for hearing in the Supreme Court it was pointed out that the Writ Petition filed by the applicant Rajsekhar was pending before the Panjic~~er~~ Bench of the High Court. We were further told that the Supreme Court ^{has} adjourned the hearing of the appeals so that this petition might be disposed of first. Rajsekhar's Petition is the Transferred Application before us now, which the Supreme Court wishes to decide first. After receiving intimation from the Supreme Court ~~on~~ this Tribunal had called for the papers from the High Court and the papers were received in this Tribunal on 28.8.1986. We are stating these facts because the Supreme Court had expressed in its order dt.15.7.1986 that it should be possible for this Tribunal to dispose of this Writ Petition within 8 weeks from that date. We may, add that after receiving the papers from the High Court we have heard the arguments of both sides on 30.9.1986 and 7.10.1986.

Mr

21. We have heard the arguments of ~~Mr.~~ Kakodkar and Sharma Learned Counsels for the applicant Rajsekhar, and Mr. Sethna and Mr. Subodh Joshi, Advocates for Respondent Nos. 1 to 3, and Mr. A. S. Rajadhyaksha advocate for Respondent No. 4. After hearing the arguments and considering the position we find ourselves bound by the judgment of the Judicial Commissioner in Special C.A. No. 74/81. We further find that the judgment is binding also on the present petitioner

Rajsekhar and the persons whose seniority is affected by the judgment.

22. Mr.Kakodkar, the learned Counsel, for the petitioner strenuously submitted that the judgment is not binding on the applicant Rajsekhar because he was not made a party to that petition. In our view, neither the applicant Rajsekhar nor the persons whose seniority is affected by the judgment were necessary parties to the petition filed by Pereira. A copy of the affidavit of G.H.Mascarenhas, Under Secretary (Personnel) of the Government of Goa, Daman and Diu which was filed in that case is filed before us. It shows that all possible objections including the main objection to the appointment of Pereira to the post of Deputy Registrar of Engineering College, Goa were raised. All the substantial points were considered by the Judicial Commissioner while allowing the petition of Pereira. Of course, the applicant Rajsekhar has raised some new points in this application ~~originally petition~~ for attacking the appointment of Pereira to the service at its initial constitution, but some of these points were actually raised on behalf of the Government of Goa in the Writ Petition filed by Pereira and we find that the remaining points could have been very well taken by the Government. Merely because some minor points were not raised by the Government before the High Court in the Writ Petition filed by Pereira, ^{we} ~~we~~ cannot ignore the judgment of the Judicial Commissioner or say that the judgment is not binding on the applicant.

22. It may be appropriate to refer here to some of the Supreme Court judgments which go to show

that the judgment of the High Court in the Writ Petition filed by Pereira is binding on all the persons like the present applicant Rajasekhar. In Satydhyan V/s. Smt. Deorajin Debi, AIR 1960 SC 943, the Supreme Court has observed that "the principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily, it applies as between past litigation and future litigation. When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding, and the decision is final, either because no appeal was taken to a higher court, or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata relating to suits is embodied in S.11 of the Code of Civil Procedure; but even where S.11 does not apply, the principle of res-judicata has been applied by courts for the purpose of achieving finality in litigation".

In Daryao V. State of U.P., AIR 1961, SC, 1457, the Supreme Court has observed that the rule of res-judicata is not merely a technical rule but it is based on public policy. It is further stated that the binding character of the judgment pronounced by the Courts of competent jurisdiction is itself an essential part of the rule. In this connection, the Supreme Court has quoted with approval the following passage from Halsbury's Laws of England, IIIrd Edition, Vol.22, page 780:

"subject to appeal and to being amended or
...15.

set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences".

In G.K.Dudani V. S.D.Sharma, AIR 1986, SC, 1455 the Supreme Court has observed that though Section 11 of the Civil Procedure Code does not in terms apply to any proceedings under article 226 of the Constitution, the principle of res-judicata does apply to all Writ Petitions under Article 226 of the Constitution.

23. In fact the above principles were not disputed before us on behalf of the applicant. The main thrust of Shri Kakodkar's argument was that the decision of the Judicial Commissioner on the Writ Petition filed by Pereira is not binding on the applicant Rajasekhar, because he was not a party to it. But the following passage from the judgment of the Supreme Court in G.M., S.C.Rly., V. A.V.R.Siddhanti, AIR 1974 SC 1755, is sufficient to meet the argument of Shri Kakodkar:

"As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain Administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay,etc. of the employees of the erstwhile Grain-Shop departments. The Respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief

is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway, which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Boards decision of October, 16, 1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

24. Coming to the facts of this case, the main point before the Judicial Commissioner in the Writ Petition filed by Pereira was whether the Government was justified in ignoring Pereira from appointment to Gr.II of the service at its initial constitution under Rule 17 of the Rules. As already pointed out the Judicial Commissioner has held that the Rule 17 does not make any distinction between a person holding a post in an officiating, temporary or permanent capacity. Further, Pinto, Srinivasagopalan, and Vaman Sardessai who were appointed to Gr.II of the services were also holding Gr.II posts in an officiating capacity and hence the Government was not justified in ignoring Pereira for appointment to Gr.II. In other words, what the Judicial Commissioner was required to consider was whether the interpretation put by the Government on Rule 17 of the Rules was correct or not. Rightly, the Union of India and the Administrator of Goa, Daman and Diu were made parties to that Writ Petition and if their interpretation of that rule was held bad in law as it was discriminatory

and hence hit by Article 14 of the Constitution, that cannot be questioned by the present applicant Rajasekhar or by his immediate senior Pukhraj Bumb. In fact, the applicant Rajasekhar was appointed on probation for a period of 2 years to Gr. II post by the Goa Government by an order dated 5th February, 1968. It is specifically mentioned in the order of appointment that "Shri Rajasekhar will be ranked junior to all the persons who will be appointed to the service at its initial constitution". The effect of the judgment of the Judicial Commissioner is to appoint Pereira to Gr.II post at the initial constitution of the service. That is why in pursuance of the decision the Government passed the first impugned order dt.27.12.1983 which we had quoted earlier. By that order Pereira was appointed to Gr.II post of that service at its initial constitution under Rule 17 of the Rules w.e.f. 1.8.1968. He was appointed from that date because the other three persons, namely pinto, Srinivasagopalan and Sardessai were also appointed by a notification of the same date. The other impugned orders are clearly consequential.

25. In substance what the Judicial Commissioner has done is to decide as to whether the Government had interpreted rule 17 correctly or not. The Rules were framed in 1967 and they are regarding the decisions of the Government towards its employees. The rules cover various aspects such as, recruitment, appointments, Training, Promotion, Confirmation, etc. To the writ petition in which the Government's interpretation of rule 17 regarding initial appointment

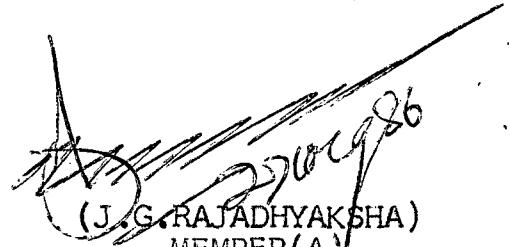
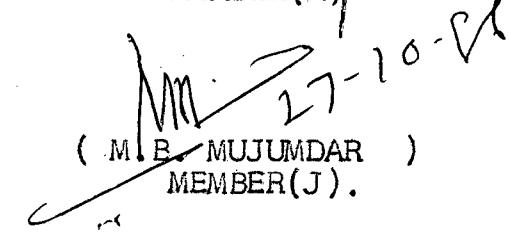
of persons to the service was challenged, the persons who were likely to be effected were not necessary parties. At the most they were proper parties in view of the judgment of the Supreme Court in Siddhanti's case. Therefore, the judgment of the Judicial Commissioner cannot be said to be not binding on persons like the present applicant. Hence the Judgment of the Judicial Commissioner in the Writ Petition filed by Respondent No.4 Pereira shall have to be held as binding on the present applicant Rajasekhar.

26. We, therefore, hold that the present applicant (Petition) is misconceived. If the petitioner so wanted he could have moved the Supreme Court in appeal against the judgment of the Judicial Commissioner, as Pukhraj Bumb has done. Of course that is also not necessary because Pukhraj Bumb's appeals against the decision of the High Court on his writ petition as well as against the decision of the Judicial Commissioner are already filed and fixed for hearing. Not only the present applicant Rajsekhar but all other persons who are affected by the Judicial Commissioner's decision are parties to these appeals. To decide the points raised on behalf of the applicant before us on the specious plea that he was not a party in that case would virtually amount to deciding an appeal against the judgment of the Judicial Commissioner, See.

27. It is true that we have heard the arguments of Mr.Kakodkar on all the points raised by the applicant. We have also heard the learned Counsel for the Respondents. They did submit that we cannot decide the

points raised by Mr.Kakodkar afresh because they are concluded by the judgment of the Judicial Commissioner either directly or constructively. Of course they also tried to meet the points made by Mr.Kakodkar. For obvious reasons, when we started hearing the arguments we were not in a position to decide as to whether we should hear arguments on all the points instead of hearing the arguments only on the point regarding the binding nature of the judgment of the Judicial Commissioner. But we are now in a position to hold that the judgment is binding so far as we are concerned as also on all the parties before us. We, therefore, refrain from discussing and giving our finding on the ~~other~~ points urged before us by Mr.Kakodkar.

28. We, therefore, dismiss the application with no orders as to costs.


(J.G. RAJADHYAKSHA)
MEMBER(A)

(M.B. MUJUMDAR)
MEMBER(J).

I have
Received copy of the
Judgment on behalf of
Applicant
31/10/86

DV K M RAJ 13 V M B.
DIRECTOR OF PROVEDORIA
Panaji (Goa)