
(1977) 11 KAR CK 0018
In the Karnataka High Court
Case No : WP. 4927/77. 31st October 1977

Konandur Lingappa and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 02-11-1977

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3

Constitution of India, 1950 — Article 166(2)

Karnataka State Vigilance Commission Rules, 1965 — Rule 4(7)

Citation : (1978) 1 KarLJ 271

Hon'ble Judges : Lal, J;Malimath, J

Judgement

Malimath, J.-These writ petitions have come upbefore us on a reference made by a learned Single Judge. The petitioners in WP. 4927/77. K. Lingappa and S. Gundaiah Setty, are members of the Legislative Assembly and Legislative Council of the State of Kar respectively. The petitioners in WP. 5489 of 1977. V.R. Krishna Iyer and Parvathagouda Basangouda Patil. are members of the Legislative Council and Legislative Assembly of the State of Karnataka respectively. In the first writ petition the only respondents are the State of Karnataka and Justice Mir Iqbal Hussain Commission of Euquiry. whereas in the second writ petition, in addition to the aforesaid respondents, the third respondent impleaded is, D. Devarai Urs, Chief Minister of the State of Karnataka. The reliefs claimed in both these writ petitions are substantially the same. As common questions of law and facts arose for consideration, these writ petitions were heard together and are being disposed of by a common order

2. In these two writ petitions what is challenged is the Notification issued on the 18th of May, 1977, under S. 3 of the Commission of Enquiry Act, 1952 (hereinafter referred to as the "Act"), appointing Justice Mir Iqbal Hussain, retired Judge of the High Court of Karnataka, to be a Commission of Inquiry for the purpose of making an inquiry into the allegations specified in the Notification and to submit a report thereon to the State Govt within a period of four months from the date of the Notification. In the first writ petition the prayer is for issue

of a writ in the nature of quo warranto and/or other appropriate writ or order as the case may be, declaring that the appointment of the second respondent as Commission of Inquiry is illegal and invalid and for a consequential direction restraining the second respondent from holding any enquiry in pursuance of the impugned Notification. In the second writ petition, the prayer is for a declaration that the Notification dated 18th May, 1977, under Sec. 3 of the Act is illegal and void and for a writ in the nature of Mandamus or other appropriate writ or direction directing respondents to forbear from taking any further action in pursuance of the said Notification.

3. For the sake of convenience, we shall refer, in the course of this order, to the parties and the documents filed in WPNo. 4927 of 1977.

4. The case of the petitioners is that the Chief Minister, Sri Devaraj Urs, and some of his Cabinet colleagues are guilty of corruption, favouritism, nepotism and abuse of power and that therefore they submitted a memorial on the 11th April, 1977, to the Govt of India listing as many as 36 charges and requesting the Govt of India to appoint a Commission under Sec. 3 of the Act and to take steps for the dismissal of the Ministry. It is their case that out of the 36 charges. 21 charges are levelled against the Chief Minister and the remaining 15 charges are levelled against some of his colleagues in the Cabinet. It is their case that they sent such a memorial after several complaints were made in this behalf on the Floor of the Legislature even by members of the Ruling Party, by the President of the Karnataka Pradesh Congress Committee (O), Sri Veerendra Patil and seven members of the Parliament belonging to the Ruling Party. On receipt of the memorial, it is their case, that the Home Minister of Govt of India called for remarks on the 26th of April, 1977, in regard to the charges levelled against the Chief Minister and his Cabinet colleagues in the memorial of the Legislature dated the 11th of April, 1977. It is their further case that the Chief Minister sent a reply on the 13th of May, 1977, as per Exhibit-B. In the said reply, the Chief Minister has met the allegations against him and has asserted that there is no substance in the same. So far as the allegations against his colleagues are concerned, he has stated that he was waiting for their replies and that the same will be forwarded to the Home Minister, Govt of India, after receiving the same from his colleagues. It is the further case of the petitioners that the Chief Minister, apprehending that the Govt of India will appoint a Commission under Sec. 3 of the Act to enquire into the allegations contained in the memorial of the 11th of April, 1977 of the Legislators, hastened to appoint a Commission under the Notification dated the 18th of May, 1977 (Exhibit "C") with the sole purpose of preventing the Govt of India from appointing its own commission under Sec. 3 of the Act. On the 18th of May, 1977, the State Govt appointed Mr. Justice Mir Iqbal Hussain, retired Judge of the Karnataka High Court to be the Commission of Inquiry for the purpose of making enquiry in to the allegations, particularly specified in the notification, and to submit a report thereon to the State Govt within a period of four months from the date of the notification. The preamble to the notification reads thus:

"Whereas allegations have been made on the floor of the House of the State Legislature and elsewhere that irregularities have been committed/excess payments made in certain matters relating to contracts, grant of lands, allotment of sites, purchase of furniture, disposal of foodgrains etc. Whereas the State Govt is of the opinion that it is necessary to appoint a Commission of Inquiry into the said allegations."

5. In paragraph-II of the Notification are listed matters which the Commission is required to inquire into. It consists of as many as 33 items. It was explained to us by the learned Counsel for the petitioners that though the items contained in paragraph-II of the Notification, are differently worded, if they are carefully scrutinised, it will disclose that of the 21 allegations made against the Chief Minister, 17 items are included though they are covered actually by 19 items. It was further explained to us that though 15 charges were levelled against the Cabinet colleagues of the Chief Minister, 8 of them have been included in paragraph-II. It was further explained to us that 5 more additional charges have been included in the Notification which did not form part of the memorial submitted by 46 legislators on the 11th of April, 1977. Those charges, it was explained, pertained to the conduct of the earlier Ministries headed by Sri S. Nijalingappa and Sri Veerendra Patil who were the Chief Ministers of the State during different periods. It is the case of the petitioners that the appointment of the Commission by the State Govt is for a collateral purpose amounting to fraud on power, the collateral purpose being to prevent the Central Govt from exercising its power of appointment of a Commn u/S. 3 of the Act with a view to make a fair and impartial inquiry into the allegations and to take steps for the dismissal of the Ministry. It is their case that the appointment of the Commission under Sec. 3 of the Act is illegal and invalid on the ground that the matters referred to the Commission relate to corruption, nepotism and abuse of power by the Cabinet Ministers which is not a matter falling in List-II or List-III of the Seventh Schedule to the Constitution in respect of which alone the State Govt is competent to appoint a Commn u/S. 3 of the Act. The petitioners' further case is that Mr. Justice Mir Iqbal Hussain held the Office of Vigilance Commissioner from which office he retired on the 18th of February 1971, and therefore he is ineligible for employment under the State Govt or for holding any political or public office in the State, in view of the statutory bar contained in sub-rule (7) of rule 4 of the Karnataka State Vigilance Commission Exiles, 1965 (hereinafter referred to as the "Rules"), framed by the Governor under the proviso to Art. 309 of the Constitution. Though under the proviso to sub-rule (7) of rule 4 of the Rules the State Government has power to grant permission to the retired Vigilance Commissioner to accept employment under the State Govt or to hold any political or public office in the State, no such express permission was in fact granted to Justice Mir Iqbal Hussain before he was appointed as a Commission under Sec. 3 of the Act. It was further maintained that the appointment of Mr. Justice Mir Iqbal Hussain as a Commission under Sec. 3 is illegal and invalid as he is ineligible to hold the public office of the Commission in view of the statutory

bar contained in sub-rule (7) of the rule 4 of the Rules. The allegations of the petitioners made in support of their writ petitions have been controverted in the statement of objections filed on behalf of the State Govt and the Chief Minister. The Commission, which has been impleaded as respondent in both the writ petitions, has not entered appearance and no return has been filed on its behalf. In the statement of objections filed on behalf of the State Govt and the Chief Minister it is maintained that the petitioners have no *vlocus standi* to maintain the writ petitions and that requisite permission was in fact granted to Justice Mir Iqbal Hussain under the proviso to sub-rule (7) of Rule 4 of the Rules to accept the appointment, the State Govt being of the view that it will further the public interest to appoint him as a Commission of Inquiry under the impugned notification and that the same was duly communicated to Justice Mir Iqbal Hussain by the Chief Secretary to the Govt by his letter dated the 18th of May, 1977, produced as Annexure-I. It is also maintained that the State Govt was competent to appoint the Commission and that the Central Govt has no competence to appoint a Commission of Inquiry to inquire into the allegations of the type referred to the Commission in question. It is further maintained that the State Govt has filed Original Suit No. 8 of 1977 in the Supreme Court of India challenging the appointment of Justice A.N. Grover Commission by the Govt of India under Sec. 3 of the Act. We may state at this stage that it is on the 23rd of May, 1977 that the Govt of India appointed a Commission under Sec. 3 of the Act appointing Justice A.N. Grover, retired Judge of the Supreme Court of India, as a Commission to inquire into certain charges of corruption, nepotism and abuse of power made against the Chief Minister of the State of Karnataka and some of his Cabinet colleagues. But the matters referred to the said commission, as is clear from Annexures I and II to the Notification appointing Justice A.N. Grover Commission, are only such of the charges made by the 46 legislators in their memorial dated the 11th of April, 1977, as were not specifically referred to Justice Mir Iqbal Hussain Commission. In the statement of objections it is specifically asserted that Mr. Justice Mir Iqbal Hussain was not appointed with a view to prevent the Central Govt from appointing a Commission. It is further stated that even if the Central Govt had the intention of appointing a commission, the State Govt was under no obligation to surrender its powers to the Centre and that therefore there was no constitutional or legal compulsion for the State Govt to yield its power to the Central Govt which the Constitution confers on the State. The allegations of *mala fides* have been denied and it is asserted that the assertions made by the petitioners in support of their writ petitions lack good faith and are wholly unmerited.

6. M/s. Venugopal and M. Rama Jois, learned Counsel appearing for the petitioners, formulated the following three grounds in support of their writ petitions:

(1) That Justice Mir Iqbal Hussain was ineligible for holding the office of Commission in the State of Karnataka, in view of the bar contained in sub-rule (7) of the rule 4 of the Rules, and that therefore his appointment as Commission

is illegal and invalid.

(2) That the appointment of Justice Mir Iqbal Hussain Commission is ultra vires Sec. 3 of the Act, his appointment having been made for a collateral purpose amounting to fraud on power, namely, to prevent the Central Govt from exercising its power of appointment of a Commission under Sec. 3 of the Act and (3) That the reference of several charges to Justice Mir Iqbal Hussain Commission is incompetent on the ground that the matters referred to it relate to corruption, nepotism and abuse of power by the Council of Ministers, which being not matters falling under List-II or List-III of the Seventh Schedule to the Constitution, the State Govt had no competence to refer the same under Sec. 3 of the Act.

7. As the learned Advocate-General has raised a preliminary objection in regard to maintainability of the writ petitions on the ground that the petitioners have no locus standi to maintain these petitions we will deal with the said objection in the first instance.

8. It was maintained by the learned Advocate-General that after Art. 226 of the Constitution was amended by the 42nd Amendment Act, in order to maintain a writ petition the person invoking the jurisdiction of the Court under Art. 226 of the Constitution has to first establish that his personal right has been infringed. It was maintained that the object of appointing a Commission under Sec. 3 of the Act is to inquire into certain matters of public importance by a Commission appointed under Sec. 3 of the Act and the question of vindicating the rights of the members of the public who have made allegations does not arise. He proceeded to contend that the four petitioners in these two writ petitions, have no locus standi to maintain these petitions, as no personal rights of theirs are infringed by the appointment of the Commission. Merely because they have levelled certain charges, that by itself is not sufficient to take the view that any of their personal rights are for adjudication so as to entitle them to complain about the appointment of the Commission.

9. The first question that requires examination is as to whether as a result of the amendment of Art. 226 by the 42nd Constitution Amendment Act any change has been brought about in regard to persons who can invoke the jurisdiction of the High Court under Art. 226 of the Constn. Art. 226, before its amendment, did not speak of persons who can seek relief. It only specified the type of writs or orders that can be issued by the High Court and the purpose for which such writs or orders could be issued. It provided that the High Court could issue to any person or authority including in appropriate cases any Govt, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of any of the rights conferred by Part-III and for any other purpose. So, it is clear that Art. 226, before its amendment, only specified the nature of writs or orders that the High Court could issue and the purpose for which those writs or orders could be issued. The writs or orders could be issued under Art. 226, before its

amendment, for the purpose of enforcing the rights conferred by Part-III and for any other purpose. Art. 226, after its amendment by the 42nd Constitution Amendment Act, reads as follows:

"226. (1) Notwithstanding anything in Art. 32 but subject to the provisions of Art. 131A and Art. 226A, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Govt, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them,- (a) for the enforcement of any of the rights conferred by the provisions of Part-III; or (b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or (c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in sub-clause (b) where such illegality has resulted in substantial failure of justice.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Govt authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Govt or authority or the residence of such person is not within those territories.

(3) No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

(4) No interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, a petition under clause (1) unless,- (a) copies of such petition and of all documents in support of the plea for such interim order are furnished to the party against whom such petition is filed or proposed to be filed; and (b) opportunity is given to such party to be heard in the matter.

(5) The High Court may dispense with the requirements of sub-clauses (a) and (b) of clause (4) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being caused to the petitioner which cannot be adequately compensated in money but any such interim order shall, if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the High Court has continued the operation of the interim order.

(6) Notwithstanding anything in clause (4) or clause (5), no interim order

(whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to a petition under clause (1) where such order will have the effect of delaying any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or any action for the execution of any work or project of public utility, or the acquisition of any property for such execution, by the Govt or any corporation owned or controlled by the Government.

(7) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32."

10. It is clear from the new Art. 226 that the type of writs or orders that could be issued are the same as writs or orders that could have been issued under the old Art. 226. The change that has been brought about in the new Art. 226 is in regard to the purpose for which the said writs or directions or orders can be issued. Whereas under the old article writs or orders could be issued not only for enforcement of the rights conferred of Part-III of the Constitution but for any other purpose, in the new Art. 226 the expression "for any other purpose" has been omitted and in its place are substituted clauses (b) and (c) excerpted above. Clauses (b) and (c) do not speak of persons who can seek relief under Art. 226(1). They only speak of the purpose for which the writs, orders or directions contemplated by the first part of Art. 226 can be issued. Under the old Article 226, though the same does not expressly provide for the persons who can seek relief, the Courts by the nature of the writ, order or direction that is sought, determined, as to who are the persons competent to invoke the jurisdiction of the High Court under Art. 226. It is from the nature of the relief sought that the question of locus standi stood regulated under the old Art. 226. As no change has been brought about, so far as the nature of the writs, orders or directions that can be issued by the High Court under Art. 226 are concerned, it has to be held that the law laid down by the Courts in regard to locus standi under the old Art. 226 still holds the field even after the amendment of Art. 226 by the 42nd Constitution Amendment Act. It is necessary to note that in clauses (b) and (c) of Art. 226 there is no reference made to the party invoking the jurisdiction of the Court under Art. 226; but in sub-article (5) of Art. 226 regulating discretion of the Court for granting interim relief it is expressly provided that what has to be examined is as to whether it is necessary to dispense with the requirements of sub-clause (a) and (b) of Cl. (4) of Art. 226 to prevent any loss being caused to the petitioner which cannot be adequately compensated in money. The absence of the word "petitioner" in clauses (b) and (c) of Art. 226(1) and the presence of the word "petitioner" in sub-art. (5) is significant. It is manifest that whether a person can. invoke the jurisdiction of the Court under Art. 226 does not in every case depend upon the question as to whether the personal rights of the petitioner are infringed or not. It is well settled that writs in the nature of habeas corpus, or quo warranto, in particular, can be issued at the instance of persons whose personal rights are not violated. The question of locus standi has therefore necessarily to be examined with reference to the relief sought by the

petitioners in the writ petitions.

11. The prayers in these two writ petitions are in substance, for the issue of a writ in the nature of quo warranto. Another relief, which is really in the nature of a consequential relief, is for the issue of a writ in the nature of mandamus directing the respondents to forbear from enforcing the notification dated the 18th of May, 1977, appointing the Commission.

12. On the question of locus standi for invoking the jurisdiction of this Court for the issue of a writ in the nature of quo warranto, we have a leading case of *Rex v. Speyer*, 1916 Kings Bench Divn. 595, which has been consistently followed by all the Courts in this country. It has been laid down in the said decision that an information in the nature of a quo warranto will lie at the instance of a private relator against a member of the Privy Council whose appointment is alleged to be invalid.

13. In regard to the locus standi for invoking the jurisdiction under Art. 226 certain general principles have been laid down by the Supreme Court in several cases. In *Gande Venkateswara Rao v. Govt of AP*, AIR. 1966 SC. 828, the Supreme Court pointed out that though the right that can be enforced under Art. 226 shall ordinarily be personal or individual right of the petitioner himself, in exceptional cases a person who has been prejudicially affected by an act or omission of an authority can file a writ even though there is no proprietary or fiduciary interest in the subject matter thereof.

14. In *Calcutta Gas Coy (Prop) Ltd. v. State of WB*, AIR. 1962 SC. 1044, the Supreme Court pointed out that though ordinarily personal or individual rights of the petitioners can be enforced under Art. 226, the writs in the nature of habeas corpus and quo warranto are exceptions to this rule.

15. In the latest decision of the Supreme Court in *J.M. Desai v. Roshan Kumar*, AIR. 1976 SC. 578, at para-38, the Supreme Court has laid down some of the tests that may usefully be employed for determining the question of locus standi, in the following terms:

"38. To distinguish such applicants from "strangers" among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by

the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

16. It is clear from the aforesaid decision that one of the tests that can be applied is, has the petitioner a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public. A person cannot have locus standi to maintain a writ petition if he is a stranger or busy body or meddlesome interloper. Bearing in mind these well recognised principle laid down by the Supreme Court, we have to decide whether the petitioners in these two writ petitions have locus standi to maintain the petitions for the reliefs prayed for by them,

17. The petitioners, apart from being members of public and taxpayers, are Members of the State Legislature. They are persons vitally interested in acting according to the oath they have taken while entering office as Members of the Legislature. They are persons interested in maintaining the rule of law and for ensuring that the functions of the State are carried on in accordance with the Constitution. They are persons vitally interested in ensuring that the State is free from the evils of corruption, nepotism, favouritism and abuse of power. Apart from these facts, it is necessary to note that the petitioners in these two petitions are signatories to the memorial dated the 11th of April 1977, submitted to the Govt of India which, it is obvious, resulted in the appointment of not only Justice Mir Iqbal Hussain Commission by the State Govt but also in the appointment of Justice Grover Commission by the Govt of India. Some of the complaints made by the petitioners and 42 other Legislators are required to be inquired into by the Commission in question. It is clear from the notices issued to the petitioners which have been produced in Writ Petition 4927 of 1977 at Exhibits G and H that they have been described as signatories to the memorandum submitted to the Union Minister making allegations specified in the annexure. By a notice Issued on the 3rd of August, 1977 by the Commission the petitioners have been called upon to appear before it, they being the signatories to the memorandum presented to the Home Minister making allegations specified in the annexure. In another notice issued by the Commission on the same date, the petitioners have been described as signatories to the memorandum submitted to the Union Minister making certain allegations. They have been called upon to furnish information relating to the allegations specified in the annexures, to furnish list of documents, if any, on which they rely and to furnish the Cornmn. wherever practicable original or true copy or copies of the same and names and addresses of the persons or authority from whom the remaining documents may be obtained. It is clear from these two notices issued by the Commission that it has also treated the petitioners as persons having special interest, an interest other than ordinary which the other members of the public

may have in regard to the inquiry by the Commission. They have been treated virtually as complainants requiring them to substantiate the charges levelled against the Ministry which the Commission is required to investigate into. The Commission is required to inquire into definite matters of public importance referred to it, most of the charges being those levelled by the petitioners and 42 other legislators in the memorial dated the 11th of April, 1977. Having regard to the aforesaid circumstances and the background, the petitioners cannot be regarded as persons who are utter strangers or busy body or meddlesome interlopers at whose instance this Court should decline to interfere under Art. 226. In our opinion, the petitioners have to be regarded as aggrieved persons entitled to seek relief under Art. 226, they being persons having a special and substantial grievance of their own. It is necessary to point out that if persons like the petitioners cannot invoke the jurisdiction of this Court under Art. 226, none possibly can, having regard to the circumstances of this case. It is apparent that this is a Commission appointed by the State Govt to inquire into the allegations most of which have been made against the present Ministry. In other words, the Commission has been appointed by the very authorities against whom allegations have been made which are required to be investigated and inquired into by the Commission. It is obvious that persons against whom allegations have been made which have to be inquired into by the Commission are not likely to be interested in challenging the appointment of a Commission, they themselves being the authors of the Commission. In the circumstances, the only class of persons who could challenge the appointment of the Commission is the members of public who cannot be regarded as utter strangers or busy body or meddlesome interlopers. The petitioners who are responsible for making allegations in the memorial submitted to the Govt of India have approached this Court for relief apprehending, inter alia, that their efforts have been frustrated by the State Govt itself appointing a Commission thereby preventing the Central Govt from appointing its own Commission in regard to these charges which would have laid further foundation for taking action against the present Ministry. Having regard to these special features, we have no hesitation in taking the view that if persons like the petitioners cannot invoke the jurisdiction of this Court under Art. 226, none can. We therefore overrule the objection of the learned Advocate-General and hold that the petitioners have locus standi to maintain these writ petitions.

18. We shall now take up the first ground for consideration. It is not disputed that Justice Mir Iqbal Hussain, after his retirement as Judge of the Karnataka High Court, was appointed as Vigilance Commissioner under the Rules. He held the said office till the 18th of February 1971, on which date he retired. The rules were made by the Governor under the proviso to Art. 309 of the Constitution and were promulgated under the notification dated the 10th of June 1965, published in the Mysore Gazette dated the 24th of June 1965. Sub-rule (2) of Rule 1 of the Rules provides that except Rules 8 and 9, these rules shall be deemed to have come into force on the 11th February, 1965 and Rules 8 and 9 shall come into

force on the date of publication of these rules in the Official Gazette. It is not disputed that the appointment of Justice Mir Iqbal Hussain as Vigilance Commissioner was made under these rules. Rule 4 of the Rules deals with the conditions of service of the Vigilance Commissioner. Sub-rule (7) of Rule 4, as it stood on the date of appointment of Justice Mir Iqbal Hussain as Vigilance Commissioner, as also the date on which he retired from the said office reads as follows:

"(7) On ceasing to hold office, the Vigilance Commissioner shall be ineligible for further employment under the State Govt or for holding any political or public office in the State of Mysore."

19. A proviso was added to this sub-rule after Justice Mir Iqbal Hussain ceased to be the Vigilance Commissioner. The same was introduced by an amendment issued under the notification dated the 23rd or Sepr, 1972, published in the Gazette dated the 26th of October 1972, It reads as follows:

"Provided that the State Govt may in exceptional circumstances, when the public interest so requires, permit a person who has held the Office of the State Vigilance Commissioner to accept any such employment or office."

20. Though in the writ petitions a stand was taken to the effect that the proviso added after Justice Mir Iqbal Hussain retired from the Office of the Vigilance Commissioner cannot be invoked by the State Govt. in the course of the arguments no such stand was taken by the learned Counsel for the petitioners who presented their arguments on the basis that the proviso newly added governs the facts of these cases. The learned Advocate-General also did not dispute that sub-rule (7) of rule 4 is applicable to Justice Mir Iqbal Hussain, he having retired as a Vigilance Commissioner and his appointment under Sec. 3 of the Act having been made after he so retired.

21. The stand taken on behalf of the petitioners is that under sub-rule (7) of rule 4, Justice Mir Iqbal Hussain, as a retired Vigilance Commissioner, became ineligible for further appointment under the State Govt or for holding any political or public office in the State Govt. The learned Advocate General did not dispute that the office of the Commission under Sec. 3 of the Act is a public office. The complaint of the petitioners is that no permission in fact was granted to Justice Mir Iqbal Hussain under the proviso to sub-rule (7) of rule 4 of the Rules to accept the appointment as a Commission and that even if there was such a permission, it is not legal and valid. But, at the outset, the learned Advocate-General maintained without entering into controversial facts that the appointment of Justice Mir Iqbal Hussain as a Commission under Sec. 3 of the Act cannot be regarded as illegal and invalid, even if no permission in fact was granted by the State Govt under the proviso to sub-rule (7) of rule 4 of the Rules before his accepting appointment as Commission. He maintained that the bar contained in sub-rule (7) of rule 4 is not absolute and that the language employed in sub-rule (7) of rule 4, read as a whole, clearly indicates that the

said proviso is only directory in character and not mandatory. If the requirement of sub-rule (7) of rule 4 is directory and not mandatory, it was maintained that the appointment of Justice Mir Iqbal Hussain as a Commissioner under Sec. 3 of the Act will have to be regarded as legal and valid whether or not permission contemplated under the proviso to sub-rule (7) of Rule 4 was granted in this case. Therefore, before examining the facts of the case, we have to first consider whether the learned Advocate General is right in maintaining that the requirements of sub-rule (7) of Rule 4 are mandatory or not.

22. If we analyse sub-rule (7) of rule 4, it will be clear that it creates ineligibility or a disqualification against a person who has held the Office of Vigilance Commissioner. The said ineligibility is such as to prevent him from taking any further appointment under the State Govt or for holding any political or public office in the State. The proviso however confers a power on the State Govt to remove this eligibility. The power in this behalf has been conferred on the State Govt which power can only be exercised on the conditions specified in the said proviso being satisfied. It prescribes two conditions, viz., (1) that there exist exceptional circumstances for granting such a permission; and (2) that the public interest requires that such permission should be granted. It is only on the fulfilment of these two conditions that the State Govt becomes clothed with the power of granting permission removing the ineligibility brought about by the operation of the first part of Sub-rule (7) of rule 4 of the Rules.

23. The principles to be borne in mind for determining the question as to whether a particular provision is mandatory or directory are well settled by the various decisions of the Supreme Court. It is enough if we refer to a decision of the Supreme Court in *State of U.P. v. Babu Ram Upadhyaya*, AIR. 1961 SC. 751, wherein the Supreme Court has observed in paragraph 29 as follows:

"The relevant rules of interpretation may be briefly stated thus: When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

24. In the first instance it is necessary to note that what we are called upon to decide is the question pertaining to a rule framed by the Governor under the proviso to Art. 309 of the Constitution determining the conditions of service of a Vigilance Commissioner. Rule 4 enumerates the conditions of service of the Vigilance Commissioner, one of which is contained in sub-rule (7) of rule 4

declaring the Vigilance Commissioner as ineligible for further employment under the State Govt or for holding any public or political office in the State. The expression used in the rule is the "Vigilance Commissioner shall be ineligible". It means, the Vigilance Commissioner shall not be eligible. The use of the word "shall", prima facie, indicates that the provision is intended to be mandatory in character. It is no doubt true that the use of the word "shall" does not conclusively determine as to whether the provision is mandatory or directory in character. What has to be ascertained is the real intention of the legislature. In order to ascertain the intention of the legislature, one has to examine the purpose and object of the rule. Sub-rule (2) of rule 4 provides that a person shall not be qualified for appointment as Vigilance Commissioner unless he is a citizen of India and has held high judicial or administrative office. Sub-rule (3) provides that the salary of the Vigilance Commissioner shall be Rs. 3,500 which is the salary paid to the Judges of the High Court. The institution of the Vigilance Commission has been constituted under the Rules with a person of such a high stature so that the institution inspires confidence in the minds of the public. The Vigilance Commissioner has been constituted with a view to eradicate the evil of corruption which pervades in the administration. It is with a view to inspire confidence in the members of the public and to ensure that the Vigilance Commissioner discharges his functions without fear or favour and in an impartial manner that several safeguards have been provided in the Rules. The object of the rule in imposing ineligibility on the retired Vigilance Commissioner is obviously to secure independence and impartiality of the incumbent so that purity and integrity in the discharge of his duties is maintained. The intentment implicit is that there shall be no further temptation to the retired Vigilance Commissioner for further employment. Corruption being the greatest evil in the country, rules have been so devised to ensure that the highest institution created by the rule, to eradicate it discharges its functions in an ideal manner inspiring confidence in the members of the public about the fair and impartial discharge of its duties. That is why care has been taken to provide for security of tenure of the Vigilance Commissioner and providing stringent conditions for his removal. If the provision incorporating ineligibility is regarded as directory in character, the very purpose and object of the rule will be defeated. The Supreme Court, while dealing with a similar prohibition which has been engrafted under Art. 316(3) of the Constitution as against the Chairman and Members of the Public Service Commission has described declaration of such ineligibility, in *State of Mysore v. R.V. Bidap*, AIR. 1973 SC. 2555, as an embargo, legal interdict and injunction, indicating thereby that the ineligibility or prohibition is mandatory in character which has been introduced with a view to serve a high purpose, viz., of maintaining purity in the administration to prevent temptation of future favours and employment.

25. But it was maintained by the learned Advocate-General relying upon the observations of the Supreme Court in *Ram Krishna, Dalmia v. Justice Tendolkar*, AIR. 1958 SC. 538, that a Commission of this nature can only make

recommendations which recommendations are not enforceable on their own force and they are only for the benefit of the Govt. It was therefore maintained by him that having regard to the object which a Commission has to serve, the bar contained in sub-rule (7) of rule 4 of the Rules cannot be regarded as mandatory. In our opinion, this question cannot be examined having regard to the nature of the employment that the Vigilance Commissioner may be offered after his retirement. That is an irrelevant circumstance for examining the question as to whether the requirement of sub-rule (7) of rule 4 is mandatory or directory in character, inasmuch as the said bar is not confined to appointment of a particular type or character.

26. Another argument of the learned Advocate General was that the proviso which has been introduced to sub-rule (7) of rule 4, if read along with the main part of rule 4(7), clearly indicates the legislature's intendment of the requirement being directory in character and not mandatory. It is no doubt true that though in the first part of sub-rule (7) of rule 4 the Vigilance Commissioner is declared to have become ineligible for further employment or from holding any political or public office in the State, the State Govt has been clothed with power to remove such ineligibility. It was maintained that when the bar contained in the latter part of Sub-rule (7) of Rule 4 can be removed by the State Govt exercising its discretion under the proviso, it is not reasonable and proper to interpret the said provision as being mandatory in character. The assumption made for this argument by the learned Advocate General is that permission under the proviso can be granted by the State Govt on its subjective satisfaction and that its satisfaction is not justiciable. But it is necessary to point out that the language employed in the proviso is not such as to indicate that grant of permission is a matter of subjective satisfaction of the State Govt. The proviso, which empowers the State Govt to grant permission to a retired Vigilance Commr lays down two objective tests to be satisfied in order to entitle the State Govt to exercise its discretion to grant permission. They are: (1) existence of exceptional circumstances; and (2) requirement of public interest. Both these tests are objective tests which have to be satisfied before exercising its power of granting permission. The Supreme Court in *E.P. Royappa v. State of Tamilnadu*, AIR. 1974 SC. 555 at 579, has observed as follows:

"82... This rule is intended to provide a safeguard for the protection of a member of the Indian Administrative Service. Sub-rule (1) enacts that no member of the Indian Administrative Service shall be appointed to a post other than a post specified in Sch.III or in other words, to a noncadre post unless the Govt makes a declaration that such noncadre post is "equivalent in status and responsibility" to a post specified in the said schedule, i.e. to a cadre post. If the State Govt wants to appoint a member of the Indian Administrative Service to a noncadre post created by it, it cannot do so unless it makes a declaration stating out which is the cadre post to which such noncadre post is equivalent in status and responsibility. The making of such a declaration is a sine quo non of the exercise of power under sub-rule (1). It is not an idle formality which can be dispensed

with at the sweet will of the Govt. It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off to a noncadre post which is inferior in status and responsibility to that occupied by him. So far as cadre post, are concerned, their hierarchy would be known, but a noncadre post created by the Govt. would be stranger in the hierarchy, and that is why sub-rule (1) requires that before appointing a member of the IAS to such noncadre post, the Govt must declare which is the cadre to which such noncadre post is equivalent in status and responsibility so that the member of the IAS who is appointed to such noncadre post, would know what is the status and responsibility of his post in terms of cadre posts and whether he is placed in a superior or equal post or he is brought down to an inferior post. If is the latter, he would be entitled to protect his rights by pleading violation of Art. 311 or Arts. 14 and 16 of the Constitution, whichever may be applicable. That would provide him effective insulation against unjust or unequal or unlawful treatment at the hands of the Govt. The object of this provision clearly is to ensure that the public services are, in the discharge of their duties, not exposed to the demoralising and depraving effects of personal or political nepotism or victimisation or the vagaries of the political machine. The determination of equivalence is, therefore, made a condition precedent before a member of the IAS can be appointed to a noncadre post under sub-rule (1). It is a mandatory requirement which must be obeyed. The Government must apply its mind to the nature and responsibilities of the functions and duties attached to the noncadre post and determine the equivalence. There the pay attached to the noncadre post is not material. As pointed out by the Govt of India in a decision given by it in MHA letter No. 32/52/56-AIS(II) dated 10th July, 1956, the basic criterion for the determination of equivalence is the nature and responsibilities of duties attached to the post and not the pay attached to the post. Once the declaration of equivalence is made on a proper application of mind to the nature and responsibilities of the functions and duties attached to the noncadre post, sub-rule (2) says that the pay of the member of the IAS appointed to such noncadre post shall be the same as he would have been entitled to, had he been appointed in the cadre post to which such noncadre post is declared equivalent. He is thus assured the pay of the equivalent cadre post and his pay is protected. Now this declaration of equivalence, though imperative is not conclusive in the sense that it can never be questioned. It would be open to a member of the IAS to contend, notwithstanding the declaration of equivalence, that the noncadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such noncadre post is in violation of Art. 311 or Arts. 14 and 16. The burden of establishing this would undoubtedly be very heavy and the Court would beslow to interfere with the declaration of equivalence made by the Govt. The Govt would ordinarily be the best judge to evaluate and compare the nature and responsibilities of the functions and duties attached to different posts with a view to determining whether or not they are equivalent in status and responsibility and when the Govt has declared equivalence after proper application of mind to the relevant factors, the Court

would be most reluctant to venture into the uncharted and unfamiliar field of administration and examine the correctness of the declaration of equivalence made by the Govt. But where it appears to the Court that the declaration of equivalence is made without application of mind to the nature and responsibilities of functions and duties attached to the noncadre post or extraneous or irrelevant factors are taken into account in determining the equivalence of the nature and the responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status and responsibilities or the declaration of equivalence is mala fide or in colourable exercise of power or it is a cloak for displacing a member of the IAS from a cadre post which he is occupying, the Court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. The declaration of equivalence must, however, always be there if a member of the IAS is to be appointed to a noncadre post. The only exception to this rule is to be found in sub-rule (4) and that applies where the noncadre post is such that it is not possible to equate it with any cadre post. Where the Govt finds that the equation is not possible, it cannot appoint a member of the IAS to a noncadre post but only for sufficient reasons to be recorded in writing. This again shows that the Govt is required to apply its mind and make an objective assessment on the basis of relevant factors for determining whether the noncadre post to which a member of IAS is sought to be appointed can be equated to a cadre post, and if so, to what cadre post it can be so equated. This is the plain requirement of Rule 9 sub-rule (1) and the question is whether the appointment of the petitioner to the noncadre post of Dy. Chairman, State Planning Commission and Officer on Special Duty was in compliance with this requirement."

27. This decision is a clear answer to the contention of the learned Advocate General that the question as to whether permission should or should not be granted to a retired Vigilance Commissioner in a particular case is a matter which depends on the subjective satisfaction of the State Govt as regards the existence of exceptional circumstances and the requirement of public interest. If the decision of the Govt under the proviso to sub-rule (7) of Rule 4 granting permission is challenged, the same has to be justified in accordance with the principles laid down in the decision of the Supreme Court referred to above. Having regard to the use of the word "shall" in the main part of sub-rule (7) of Rule 4, and having regard to the object which the provision attracting ineligibility is expected to serve, we have no hesitation in taking the view that the legislature intended sub-rule (7) of Rule 4 of the Rules to be mandatory and not directory.

28. Now coming to the merits of the case, it was maintained by the learned Counsel for the petitioners that firstly there is no order of the State Govt in existence granting permission to Justice Mir Iqbal Hussain to accept appointment as the Commission. In the statement of objections filed on behalf of the respondents, it is stated in para-5 as follows:

"The Govt. in exercise of its power under the proviso to sub-rule (7) of Rule 4

(wrongly typed as Rule 5) of the said Rules on an examination of all relevant factors including the distinguished record of service of Justice Mir Iqbal Hussain both as a Judge of this Hon"ble Court and as the Vigilance Commissioner for the State and taking into consideration the high reputation he enjoyed for integrity, honesty and judicial independence and regard being had both to his record of service and to the wide ranging experience he had, considered that it would further the public interest to appoint him as the Commission of Inquiry under the impugned Notification. The order of the Govt to this effect has duly been communicated to Sri Mir Iqbal Hussain by the Chief Secretary to the Govt by his letter DPAR 7 GAN 77 (Part I) dated 18-5-1977. A true copy of the same is annexed hereto as Annexure, R-1."

29. The letter referred to in the statement of objections as Annexure-R-1 reads as follows:

"Govt of Karnataka, Chief Secretary. Vidhana Soudha, Bangalore-560 001 D.O. No. DPAR 7 GAM 77 (Part-1) May 18, 1977.

Dear Justice Shri Iqbal Hussain,

Notification dt. 18th May, 1977 appointing you as the Commission of Inquiry to enquire into certain allegations. Trust you will kindly accept.

Permission in terms of sub-rule (7) of Rule 4 of the Karnataka State Vigilance Commission Rules, 1965 has been accorded by the Govt.

Yours Sincerely,Sd/- (G.V.K. Rao)"

30. The letter Annexure-R-1 does not itself purport to be the order or decision of the Govt granting permission to Justice Mir Iqbal Hussain under sub-rule (7) of Rule 4. The letter refers to the grant of permission by the State Govt. It is therefore, clear that Annexure-R-1 is only a communication of the order or decision of the Govt and the same is not an order or permission of the Govt. In *Messrs Ghaio Mal & Sons v. State of Delhi*, AIR. 1959 SC. 65, the Supreme Court. has observed that a document which conveys sanction can hardly be regarded as the sanction itself. As Annexure R-1 is the only document that was relied upon in the statement of objections, it was maintained by the learned Counsel for the petitioners that apart from the fact that the letter by itself is not an order or permission of the Govt. it does not conform to the requirements of Art. 166 of the Constitution in that the alleged decision of the Govt has not been expressed to be taken in the name of the Governor. Hence it was urged that the protection of sub-article (2) of Art. 166 of the Constitution is not available to the State, It is realising this difficulty that the learned Advocate General placed in support of his case the relevant file of the Govt bearing on the question of appointment of the Commission and grant of permission to Justice Mir Iqbal Hussain and the Karnataka Govt Rules of Business, 1964 made by the Governor under Art. 166(2) and (3) of the Constitution. In addition, the learned Advocate General also relied upon the statement contained in paragraph 5 of the

statement of objections in support of his case that the State Govt. did in fact, grant permission under the proviso to sub-rule (7) of Rule 4 before Justice Mir Iqbal Hussain accepted the appointment. We may, at this stage, state that on receipt of the letter Annexure R-1, Justice Mir Iqbal Hussain conveyed acceptance of appointment by his letter dated 19th May 1977.

31. As the protection of Art. 166(2) of the Constitution is admittedly not available, the learned Advocate General had to place material to establish that permission was, in fact, granted by the State Govt under the proviso to sub-rule (7) of Rule 4. So far as para-5 of the statement of objections relied upon by the learned Advocate General is concerned, it was rightly maintained by the learned Counsel for the petitioners that the same not having been spoken to by a competent person as required by law, the same cannot be relied upon.

32. The statement of objections is supported by the affidavit of Shri V.S. Naik, Under Secretary to Govt. Dept of Personnel and Administrative Reforms (Commissions) Vidhana Soudha, Bangalore. He has stated in para-1 of the affidavit that he has been authorised to swear to the affidavit on behalf of the respondents. The only paragraph which is relevant is para-2 which reads as follows:

"The statements made in paragraphs 1 to 16 of the statement of objections accompanying this affidavit, are true to my knowledge and the said statements are based on information and I believe them to be true."

33. The deponent has not disclosed the source of his knowledge or information in regard to the statement of facts contained in paragraphs 1 to 16 including para-5. He does not state that he participated in the discussion when the decision was taken by the Govt or that he has ascertained those facts with reference to the relevant file. The relevant file which was produced by the learned Advocate General for our perusal also does not indicate the initials or signature of the deponent nor does it show that he was one of the persons present when the Govt is alleged to have taken a decision. Having regard to these infirmities, following the decision of the Supreme Court in *Barium Chemicals Ltd. v. Company Law Board*, AIR. 1967 SC. 295, at para-57 (page 319), we hold that no weight can be attached to the averments made in para-5 of the statement of objections. That was also a case of a decision having been derived after discussion. The Supreme Court observed that in the absence of any particulars about the alleged discussion and the source of information not having been disclosed in the affidavit, no reliance can be placed on such an affidavit.

34. The only other material relied upon by the learned Advocate General to establish grant of permission by the State Govt that survives for consideration is the information contained in the relevant file produced by the learned Advocate General. On the first page of the file is the Minute of the Chief Minister Shri D. Devaraj Urs dt. 17th May 1977. The first paragraph indicates that a decision was taken at the Cabinet Meeting held on the 14th May 1977 to appoint a

Commission of Inquiry to investigate and fix responsibility, if any, on the several issues concerning which Govt has been criticised. In the second paragraph it is stated that Mr. Mir Iqbal Hussain, Retired Judge of the Karnataka High Court, who has been consulted by the Advocate General and the Law Secretary has consented to be appointed as a one-man Commission of Inquiry and that orders should be issued immediately appointing him as a Commission of Inquiry for the purpose. Para-3 states that the Commission of Inquiry should investigate the several issues as appended. There is another note to the effect that the Commission may be requested to present interim reports on issues as and when investigated. The subsequent notes on this page indicate that Shri B.K. Bhattacharya, Joint Secretary, Dept of Cabinet Affairs and DPAR had marked the file to the Governor. The Governor has signed the same on 17th May 1977 indicating his approval of the action proposed by the Cabinet. On the back side of this page are written paragraphs 7 to 11. The relevant paragraphs that need be looked into are paragraphs 9, 10 and 11. Para-9 indicates that the draft of the Notification is in order and that the Chief Secretary Shri GVK. Rao has signed it on 18-5-1977 saying "P1 Issue". It is clear from the holdings on the file that up to this stage none concerned was aware that Justice Mir Iqbal Hussain was under a legal disability to accept the office of the Commission and that that disability could be removed under sub-rule (7) of Rule 4. It is only after Shri GVK. Rao has stated that the order may be issued on 18-5-1977 that the deficiency appears to have been noticed which is obvious from what is stated in paragraphs 10 and 11 which read as follows:

"10. After discussion with Secy to C.M. Dftsman and ex-officio JSLD & CS it was decided that Justice Mir Iqbal Hussain may be given permission under Vigilance Commission Rules to accept this office. Accordingly a letter to Justice Mir Iqbal Hussain has been put up and the same has been signed by CS.

11. The file may be put up to CM with ref. to para-7 and for approval and ratification of para-10.

Sd.G.V.K. Rao 18-5-77 Inls. G.V.K. 26-5-77 Inls. BKB 28-5-1977 Sd.B.K. Bhattacharya 18-5-77. Inls. D. Devaraj Urs. Chief Minister 26-5-77.

35. It is clear from paragraphs 10 and 11 extracted above that the matter did not go to the Governor in the matter of granting permission to Justice Mir Iqbal Hussain under the proviso to sub-rule (7) of Rule 4. The learned Advocate General strongly placed reliance on paragraphs 10 and 11 and contended that the decision was taken by the Govt on the 18th of May 1977 according permission under the proviso to sub-rule (7) of Rule 4 to Justice Mir Iqbal Hussain and that it is only after granting such permission that the Notification with a letter of the Chief Secretary was sent to Justice Mir Iqbal Hussain for obtaining his acceptance. As Justice Mir Iqbal Hussain conveyed his acceptance on the 19th of May 1977, it was maintained that the permission has preceded his acceptance of the appointment and therefore, there is no invalidity in the matter of appointment of Justice Mir Iqbal Hussain under Section 3 of the Act.

36. It is clear from para-10 that after discussion, it was decided that Justice Mir Iqbal Hussain may be given permission under Vigilance Commission Rules to accept the office of the Commission of Inquiry. But in para-11 it is stated that the file may be put up to the Chief Minister for approval and ratification of para-10. If paragraphs 10 and 11 are read together, it will be difficult to conclude that what is contained in para-10 is the decision of the Chief Secretary taken on behalf of the State Govt to grant permission under the proviso to sub-rule (7) of Rule 4. If the Chief Secretary himself had taken a decision on behalf of the Govt he being empowered to do so under the Karnataka Government Rules of Business, 1964 (hereinafter referred to as the "Rules of Business"), it would not have been stated in para-11 that para-10 should be placed before the Chief Minister for approval and ratification. The file is required to be sent not merely for ratification but also for approval. The use of the words "approval" and "ratification" in the context clearly indicates that the Chief Secretary was not prepared to take the responsibility of taking a decision on behalf of the State Govt and that he wanted the Chief Minister to take the responsibility for the decision. If the Chief Secretary thought that way, it is not surprising particularly having regard to the fact that it is the Cabinet which had taken the decision to appoint Justice Mir Iqbal Hussain to the office of the Commission of Inquiry which decision was approved by the Governor. It is also necessary to note that the question of ineligibility or disqualification was not considered when the decision to appoint Justice Mir Iqbal Hussain was taken. It is only when this deficiency was discovered at a later stage that a discussion appears to have taken place at the official level in regard to the necessity to grant permission under the proviso to sub-rule (7) of Rule 4 of the Rules. The note in paragraphs 10 and 11 has therefore, to be understood as being advisory in character advising grant of permission to Justice Mir Iqbal Hussain under the proviso to sub-rule (7) of Rule 4.

37. In support of his contention Sri R.N. Byra Reddy, learned Advocate General, further relied upon Rule 26 of the Rules of Business to establish that the Chief Secretary was competent to take the decision on Behalf of the State Govt and that the decision of the Chief Secretary taken on the 18th of May 1977 should be regarded as a decision of the Govt having regard to the powers given to the Chief Secretary under sub-rule (2) of Rule 26 of the Rules of Business. Sub-rule (2) of Rule 26 of the Rules of Business reads as follows:

"Subject to the general or special directions of the Minister-in-charge, routine cases and cases of minor importance, namely cases covered by rule, decided policy, or precedent which do not involve the over-ruling of a Head of Dept and which raise no points of delicacy, may be disposed of by the Secretary of the Dept on his own responsibility. The Secretary of the Dept may also dispose of in the absence the Minister-in-charge or the Minister of State or the Deputy Minister cases requiring immediate action, on his own responsibility."

38. It was maintained that the question of grant of permission under sub-rule (7)

of Rule 4 falls in the first part of sub-rule (2) of Rule 26 of the Rules of Business in that this is a case of routine type and of minor importance. The learned Advocate General maintained, whether or not the Chief Secretary is right in taking such a decision, he is competent under sub-rule (2) of Rule 26 of the Rules of Business to grant such permission on behalf of the Govt. But it was maintained by the learned Counsel for the petitioners that whether or not the matter can be regarded as falling under sub-rule (2) of R. 26 of the Rules of Business having regard to the facts of the case, the Chief Secretary could not have taken any decision under the proviso to sub-rule (7) of Rule 4 granting permission to Justice Mir Iqbal Hussain to accept the office of the Commission of Inquiry. Relying upon Item No. XXIX of the Second Schedule read with Rule 17 of the Rules of Business pertaining to Cabinet subjects, it was maintained that cases which require modification, alteration or reversion of decision already taken by the Cabinet have to be placed before the Cabinet. Schedule Two to the Rules indicates cases which shall be brought before the Cabinet for consideration. Item No. XXIX provides that cases which require modification, alteration or reversion of decisions already taken by the Cabinet have to be placed before the Cabinet. In this case, the decision to appoint Justice Mir Iqbal Hussain to the office of the Commission of Inquiry was taken at the Cabinet Meeting held on the 14th May 1977 as is clear from the Minutes of the Chief Minister to which we have adverted above. As already stated, the decision to appoint Justice Mir Iqbal Hussain as the Commission was taken, he having been already consulted by the Advocate General and the Law Secretary. After the decision was taken to appoint Justice Mir Iqbal Hussain the matter was placed before the Governor, who agreed to the proposal on 17th May 1977. As Rule 4(7) is attracted, Justice Mir Iqbal Hussain could not have been appointed as the Commission without the State Govt. in the first instance, granting permission under the proviso to sub-rule (7) of Rule 4 of the Rules. On the date the decision to appoint Justice Mir Iqbal Hussain as the Commission was taken, it is obvious that he was ineligible for appointment. There is absolutely no reference to this aspect of the matter in the Minutes of the Chief Minister. It is only for the first time in the note of the 18th May 1977 that there is a reference to the necessity to grant permission to Justice Mir Iqbal Hussain under the Rules. If the question of granting permission to Justice Mir Iqbal Hussain was before the Cabinet on 14th May 1977 when it took the decision, it would not have been stated in para-10 of the notes that a discussion was held on 18th May 1977 at the official level about the grant of permission to Justice Mir Iqbal Hussain under the proviso to sub-rule (7) of Rule 4 of the Rules. Ratification and approval by the Chief Minister would be unnecessary if the Cabinet itself had taken the decision. We have therefore, no hesitation in holding that when the decision was taken by the Cabinet to appoint Justice Mir Iqbal Hussain as the Commission, no decision, in fact, was taken on the question of granting permission under the proviso to sub-rule (7) of Rule 4. As the decision to appoint Justice Mir Iqbal Hussain was taken by the Cabinet without knowing that Justice Mir Iqbal Hussain was ineligible, it is obvious that any subsequent decision to grant permission would result in modification or

alteration of the decision already taken by the Cabinet on the 14th May 1977. Under Item No. XXIX of Schedule Two to the Rules of Business, none other than the Cabinet could take a decision to modify the decision already taken by the Cabinet. That being the position, the Chief Secretary could not have exercised his powers under sub-rule (2) of Rule 26 of the Rules of Business for granting permission to Justice Mir Iqbal Hussain having regard to the Cabinet decision of the 14th May 1977. In the circumstances the decision-to grant permission under the proviso to sub-rule (7) of Rule 4 could only be taken by the Cabinet and none else. Hence the note in paragraph 10 dated 18th May 1977 cannot be regarded as a decision of the Govt granting permission under the proviso to sub-rule (7) of Rule 4 of the Rules

39. For the same reason, even if it is assumed that the Chief Minister must be regarded as having taken a decision on 26th May 1977 when he approved the note in para-10, his decision cannot be regarded as the decision of the Govt as the decision could be taken only by the Cabinet and none else.

40. We may also point out at this stage Item No. xii of the Fourth Schedule to the Rules of Business which requires that any departure from the Rules which comes to the notice of the Chief Secretary or the Secretary of any Dept must be placed before the Governor. When Shri B.K. Bhattacharya or Shri GVK. Rao, Chief Secretary, realised that the decision was taken by the Cabinet to appoint Justice Mir Iqbal Hussain as the Commission ignoring the mandatory requirements of sub-rule (7) of Rule 4 of the Rules, the matter had to be placed before the Governor as required by Item No. xii of the Fourth Schedule. We fail to see any good reason for deviating from the normal procedure which should have been followed in this case. Care was not taken to apprise the Cabinet when it took the decision on the 14th of May 1977 that Justice Mir Iqbal Hussain suffered from ineligibility under sub-rule (7) of Rule 4 and that he can be appointed only after the State Govt grants permission under the proviso to sub-rule (7) of Rule 4 of the Rules. As this deficiency was realised later, the matter, in fairness, should have been processed in accordance with the Rules of Business indicating the necessity to grant permission under the proviso to sub-rule (7) of Rule 4 and in regard to the facts and circumstances showing the existence of exceptional circumstances and the requirement of public interest justifying grant of permission. We see no good reason as to why all this necessary care and attention which was required to be taken at the highest level was not taken in this case.

41. We have held that no decision of the Govt as required by law was taken granting permission to Justice Mir Iqbal Hussain to accept the office of the Commission. Even assuming for the sake of argument that the Chief Secretary, as contended by the learned Advocate General, was competent to grant permission on behalf of the State Govt we have further to examine the contention of the learned Counsel for the petitioners that the said decision is illegal and invalid. It was maintained by the learned Counsel for the petitioners

that there is no material to indicate that the State Govt formed an opinion in regard to the existence of the condition precedent which are required to be satisfied for grant of permission under the proviso to sub-rule (7) of Rule 4. It was further maintained that there is no material to indicate the application of the mind to the relevant materials before permission was granted. It was also maintained that in fact, no material existed to which the State Govt could have applied its mind and formed an opinion in regard to the two conditions precedent which are required to be satisfied for granting permission under the proviso to sub-rule (7) of Rule 4.

42. The learned Advocate General sought to meet these arguments of the learned Counsel for the petitioners by relying upon para-5 of the Statement of Objections and Notes 10 & 11 of the Govt file. So far as para-5 of the Statement of Objections is concerned, we have already held that the affidavit in support of the statement of objections not being of a person who had any knowledge about these matters, the same has no evidentiary value. Besides, there is no reference to the formation of opinion regarding existence of exceptional circumstances justifying permission being granted, under the proviso to sub-rule (7) of Rule 4 of the Rules. All that is stated is that the State Govt on an examination of all relevant factors including the distinguished record of service of Justice Mir Iqbal Hussain both as a Judge of this Hon"ble Court and as the Vigilance Commissioner for the State and taking into consideration the high reputation he enjoyed for integrity, honesty and judicial independence and regard being had both to his record of service and to the wide ranging experience he had, considered that it would further the public interest to appoint him as the Commission of Inquiry under the impugned Notification. In para-5, there is absolutely no reference to the most important condition to be satisfied, viz, existence of exceptional circumstances justifying grant of permission under the proviso to sub-rule (7) of Rule 4 of the Rules. Even if para-5 of the statement of objections is taken into account, it is not sufficient to establish that the State Govt granted permission after being satisfied that exceptional circumstances exist warranting granting of permission to Justice Mir Iqbal Hussain to accept the appointment. Besides, what is taken into account, among other factors, is the record of service of Justice Mir Iqbal Hussain as the Vigilance Commissioner. It is to be noted that it is because he was the Vigilance Commissioner that he incurred this ineligibility or disqualification for further appointment or for holding any public office. Therefore, we fail to see how, while granting permission, the fact that Justice Mir Iqbal Hussain was functioning as the Vigilance Commissioner can be regarded as an exceptional circumstance justifying grant of permission under the proviso to sub-rule (7) of Rule 4 of the Rules. It is also necessary to mention at this stage that, an objection appears to have been taken before the Commission to the effect that Justice Mir Iqbal Hussain had dealt with some of the matters referred to him when he was a Vigilance Commissioner and that therefore it is not proper for him to deal with these items. Those are Items XXVIII, XXIX and XXX of the items referred to the Commission for enquiry. The Commission, by its order

dated 20th August 1977, certified copy of which has been produced as Ext."F" by the petitioners in WP. 4927 of 1977, without examining the merits of the contentions, observed as follows:

"But in view of this allegation, and to remove any suspicion, the Hussain Commission thinks it proper that allegation Nos. XXVIII, XXIX and XXX should not be inquired into by this Commission. The Commission will separately address the Govt in the matter, for deletion of the said allegations from the said Notification."

This highlights the necessity on the part of the State Govt to examine all relevant aspects carefully before granting permission to Justice Mir Iqbal Hussain to accept the appointment. If the Commission appointed cannot, for one reason or the other, enquire into some of the matters sought to be referred to it, it would undoubtedly be an important matter for consideration of the Govt as to whether in fairness and in propriety it is proper to grant permission to Justice Mir Iqbal Hussain to accept the Commission when on appointment of such Commission, it cannot, having regard to the principles of fairness and propriety, go into some of the important matters referred to it for its enquiry and report. It is difficult to surmise as to whether the State Govt would have thought it fit to grant permission to Justice Mir Iqbal Hussain and appoint him as Commission if the State Govt had examined the relevant aspects, particularly the question as to whether all or some of the matters referred to the Commission could or could not legitimately be enquired into by Justice Mir Iqbal Hussain when he was appointed as a Commission. Notes 10 and 11 in the file of the Govt, on which considerable reliance was placed by the learned Advocate General, only indicate that some discussion took place with the Secretary to the Chief Minister, Draftsman and Ex-Officio Joint Secretary, Law Dept and the Chief Secretary. All that is stated in para-10 is that after discussion, it was decided that Justice Mir Iqbal Hussain may be given permission under Vigilance Commission Rules to accept the office. There is no reference whatsoever to the application of the mind to the condition precedent to be satisfied for the purpose of grant of permission under the proviso to sub-rule (7) of Rule 4 of the Rules. It is not stated in the Notes that after discussion the officials came to the conclusion that exceptional circumstances exist and that public interest requires that permission should be granted to Justice Mir Iqbal Hussain. Even by a liberal construction of Notes 10 and 11, it is impossible to take the view that the conditions precedent to which the State Govt was required to apply its mind were present in the mind of the Govt and that it applied its mind to the same. Though there is reference to discussion, it is not detailed as to what are the matters that were discussed. None of the officials who participated in the discussion have chosen to file any affidavit in these writ petitions, disclosing the nature of the discussion that took place and the aspects that were considered when the said discussion took place. All these infirmities, which are to be found so far as the discussion of the officials is concerned, are equally attracted to the decision, if any, the Chief Minister must be regarded as having taken on the 26th of May, 1977 when he approved the proposals in Notes

10 and 11. There is no affidavit of the Chief Minister filed in these cases disclosing the matters which were taken into consideration in regard to formation of opinion. The only reasonable inference possible from Notes 10 and 11 is that, there was no application of the mind of anyone to the two conditions precedent, viz, regarding existence of exceptional circumstances and the requirement of public interest to grant permission to Justice Mir Iqbal Hussain under the proviso to sub-rule (7) of Rule 4 of the Rules. It also indicates that no material in fact existed to which the mind could be applied for the formation of the necessary opinion. Though, as maintained by the learned Advocate General, the qualifications and credentials of Justice Mir Iqbal Hussain may be well known to all concerned having regard to the high positions which he held as the Judge of this Court and as the Vigilance Commissioner and in various other capacities, it has to be pointed out that it is not the question of mere suitability of Justice Mir Iqbal Hussain for appointment as a Commission under S. 3 of the Act that was relevant to be examined. What was of greater significance was as to whether circumstances justified granting of permission under the proviso to sub-rule (7) of Rule 4 of the Rules to accept the appointment and to remove the ineligibility or disqualification flowing from the application of sub-rule (7) of Rule 4 of the Rules. From this point of view, there has not been any examination of the relevant aspects either at the official level or at any higher level.

43. The formation of opinion and the existence of relevant material for such formation of opinion is not a matter of mere formality. As already indicated, a very high purpose is sought to be achieved by attracting ineligibility to a retired Vigilance Commissioner by sub-rule (7) of Rule 4 of the Rules. That can be only removed if exceptional circumstances exist and the public interest so requires. We have already held that it is not a matter of subjective satisfaction of the State Govt but that it is a matter of objective satisfaction in regard to satisfaction of the two conditions precedent. The Sup Ct has in *Union of India v. J.N. Sinha*, AIR. 1971 SC. 40, laid down in para-8 as follows while dealing with formation of opinion under Rule 56(j) of the Fundamental Rules under which the Govt is required to form an opinion that it is necessary to retire the Government servant in public interest:

"Now, coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a Govt servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bonafide forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

It is clear from this decision of the Supreme Court that when the formation of the

opinion is challenged, it has to be justified by the authority taking such a decision. In this case, as already stated, it is the case of the petitioners that the requisite opinion was not formed and that the decision is not based on any relevant material. We may also usefully rely upon the observations made by the Supreme Court in *Swadeshi Cotton Mills v. State industrial Tribunal, U.P.*, AIR. 1961 SC. 1381, in para-11:

".....Our conclusion therefore is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order (be it executive or of the character of subordinate legislation), it is not necessary that the satisfaction of those conditions must be recited in the order itself, unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the authority passing the order to satisfy the Court by other means that the conditions precedent were completed with....."

In this case, the burden of establishing that the conditions precedent for granting permission under the proviso to sub-rule (7) of Rule 4 of the Rules have been satisfied which was undoubtedly on the State, it has miserably failed to discharge the same. We have, therefore, no hesitation in taking the view that no valid permission was accorded, as required by the proviso to sub-rule (7) of Rule 4 of the Rules in favour of Justice Mir Iqbal Hussain to remove the ineligibility that was attracted by the first part of sub-rule (7) of Rule 4 of the Rules.

44. It was maintained by the learned Advocate General that even if it is held that there was no valid permission granted by the Chief Secretary on behalf of the State Govt on the 18th of May, 1977, it could be held that valid permission was accorded at any rate on the 26th of May, 1977 when the Chief Minister approved Notes 10 and 11. What infirmities we have noticed so far as grant of permission by the Chief Secretary as embodied in Notes 10 and 11 are concerned, are equally applicable to the alleged decision of the Chief Minister said to have been taken on the 26th of May, 1977, Besides, if it is assumed that a decision was taken to grant permission on the 26th of May, 1977, the same was not communicated after 26th of May, 1977. A decision which is not communicated is not a decision at all as held by the Supreme Court in *Bachhittar Singh v. State of Punjab*, AIR. 1963 SC. 395, Besides, as the appointment became final on acceptance by Justice Mir Iqbal Hussain on the 19th of May, 1977 an illegal appointment cannot be ratified by subsequent grant of permission on the 26th of May, 1977. In *Panduranga v. State of Mysore*, (1964) 2 Mys. L.J. 451, this Court has pointed out that an appointment cannot be ratified as otherwise ratification will become a mere matter of formality and not of substance. As laid down by this Court in *M. Madda Reddy v. Election Officer*, 1960 Mys. L.J. 718, the question

as to whether a particular person is in possession of the qualification or not has to be examined with reference to the relevant date. In this case, the relevant date for the purpose of finding out as to whether an ineligible person was appointed is the date on which the appointment was made and not a subsequent date. Approving the view taken by this Court, the Supreme Court in *Indramani Pyarelal Gupta v. W.R. Nattu*, AIR. 1963 SC. 274, has held that unless the statute expressly confers power to make orders with retrospective effect, the Govt cannot make any order with retrospective effect. Applying the rule laid down by the Supreme Court, it has to be held that power of granting permission under the proviso to sub-rule (7) of Rule 4 could not have been exercised by the Chief Minister with retrospective effect i.e., with effect from the date on which the appointment of Justice Mir Iqbal Hussain was made. We have, therefore, no hesitation in concluding that even if it is assumed that permission was granted by the State Govt on 26th May, 1977 under the proviso to sub-rule (7) of Rule 4, the said permission being illegal and invalid, the infirmity vitiates the appointment.

45. It was however, maintained by the learned Advocate General that even if the appointment of Justice Mir Iqbal Hussain is illegal and invalid, we should clarify that the office of the Commission of Enquiry will continue thereby entitling the State Govt to appoint an appropriate incumbent under S. 3 of the Act. In other words, he maintained that we should invoke the principle of severability and declare only that portion of the impugned Notification as illegal and invalid which is found to be made in contravention of sub-rule (7) of Rule 4 and maintain the remaining, part of the impugned Notification. The learned Advocate General maintained that the impugned Notification comprises of two parts, the first part being to bring into existence a Commission of Inquiry and the second part being to appoint an incumbent to the said office. If the appointment of the incumbent is void for any reason, it was maintained that the first part of the Notification in so far as it brings into existence a Commission of Inquiry can be maintained as legal and valid. The tests for determining the Question of severability have been laid down by the Supreme Court in *Shri Ram Krishna Dalmia v. Sri Justice Tendolkar*, AIR. 1958 SC. 538, which read as follows:

".....Having regard to all these considerations it appears to us that only that portion of the last part of Cl. (10) which calls upon the Commission of Inquiry to make recommendations about the action to be taken "as and by way of securing redress or punishment", cannot be said to be at all necessary for or ancillary to the purposes of the Commission. In our view the words in the latter part of the section, (sic) namely, "as and by way of securing redress or punishment", clearly go outside the scope of the Act and such provision is not covered by the two legislative entries and should, therefore, be deleted. So deleted the latter portion of Cl. (10) would read-"and the action which in the opinion of the Commission should be taken....to act as a preventive in future cases."

Deletion of the words mentioned above from Cl. (10) raises the question of

severability. We find ourselves in substantial agreement with the reasons given by the High Court on this point and we hold that the efficacy of the notification is in no way affected by the deletion of the offending words mentioned above and there is no reason to think that the Govt would not have issued the notification without those words. Those words do not appear to us to be inextricably wound up with the texture of the entire notification."

We have to examine the contention of the learned Advocate General bearing these principles laid down by the Supreme Court for deciding the question of severability. The relevant portion of the impugned Notification reads as follows:

"Now therefore, in exercise of the power conferred by sub-sec. (1) of Sec. 3 of the Commissions of Inquiry Act, 1952 (Central Act, 60 of 1952) the Govt of Karnataka hereby appoint Justice Shri Mir Iqbal Hussain, Retired Judge of the Karnataka High Court to be the Commission of Inquiry for the purpose of making an inquiry into the said allegations particularly specified below and to submit a report thereon to the State Govt within a period of four months from the date of this Notification."

What was maintained by the learned Advocate General is that the Notification can be allowed to remain in tact striking the following words:

"Justice Shri Mir Iqbal Hussain, Retired Judge of the Karnataka High Court."

If the aforesaid words are deleted from the Notification, it was maintained that the remaining part of the Notification can be allowed to remain in tact with the result, the office of the Commission created by the impugned Notification can remain in tact, We have to gather the intention of the State Govt to determine the test of severability. We have to decide as to whether without the aforesaid words, the State Govt would have issued the impugned Notification. It is necessary to note that the decision taken to appoint the Commission with Justice Mir Iqbal Hussain as its member was a single and composite decision which was taken by the Cabinet on the 14th of May, 1977. The Notification prescribes the period of four months for the completion of the work assigned to the Commission. It requires the Commission to enquire into the allegations specified in the Notification and to submit report within a period of four months from the date of the Notification. It is, therefore, clear that the Commission has to function from the date of the Notification and to submit its report within four months from the date of the said Notification. If there is a Commission without an incumbent, it is impossible for it to function from the date of the notification and to submit its report within four months from the date of the notification. It is, therefore, difficult to take the view that the State Govt would have constituted a Commission without the incumbent being appointed in this case. The appointment of the incumbent and the constitution of the Commission are inextricably wound up with the texture of the entire Notification, for one part of it cannot be severed from the other. As the portion of the Notification pointed out by the learned Advocate General is not severable, it is not possible to accede to

the contention of the learned Advocate General.

46. As we are of the opinion that the test of severability cannot be invoked in this case, it is unnecessary for us to examine the further contention of the learned Advocate General based on the language of Sec. 3(3) and Sec. 8A(2) of the Act that the scheme of the Act permits a Noti-fication being issued under Sec. 3(1) of the Act in the first instance constituting the Commission without an incumbent and thereafter appointing an incumbent to the office so created by another and subsequent Notification.

47. From what we have held above, it is clear that there has been a contravention of the proviso to sub-rule (7) of Rule 4 of the Rules, as a result of which the ineligibility attached to Justice Mir Iqbal Hussain by the first part of sub-rule (7) of Rule 4 was not removed in accordance with law. The State is under a legal obligation by virtue of sub-rule (7) of Rule 4 not to appoint a person suffering from disability under the said provision to hold a public office like the office of the Commission without granting permission removing the said ineligibility in accordance with the proviso to sub-rule (7) to Rule 4. The petitioners have established that the State Govt has failed to discharge its legal obligation flowing from sub-rule (7) of Rule 4 of the Rules. The petitioners have, therefore, established the contravention of law as required by Art. 226(1)(b) of the Constitution. It is not possible to take the view that the injury flowing as a result of contravention of law in this case is not of substantial nature. The State owed a duty not to appoint a person who, in law, is ineligible for appointment as a Commission. It is to be noted that the Commission came into existence for the purpose of enquiring into matters of public importance, allegations having been made of corruption, nepotism, favouritism and abuse of power against the Chief Minister and his cabinet colleagues. If a Commission has to be appointed for investigating into such allegations, it is needless to say that the person so appointed must not only be suitable for such appointment in every respect but should not suffer from any legal disability or disqualification. If as a result of appointment made in contravention of law the enquiry proceeds, it will result in unnecessary waste of public time and money. The petitioners in particular who have been described as memorialists and who were to a certain extent responsible for the appointment of a Commission are summoned by the Commission to appear before it and to substantiate those allegations. They will be required to appear before the Commission invalidly appointed at great cost of time and expanse to them. If the Commission proceeds to hold the enquiry, though the findings of the said Commission may not by themselves be enforceable, as it will result in waste of public time, and money and, inconvenience and expense to the petitioners and members of the public who are to participate in the said enquiry, we have no hesitation in taking the view that these writ petitions must be regarded as writ petitions for redressal of substantial injury resulting from contravention of the provisions of sub-rule (7) of Rule 4 of the Rules, so as to entitle the petitioners to invoke the jurisdiction of this Court under Art. 226(1)(b) of the Constitution.

48. As in our opinion these writ petitions are entitled to succeed on the first ground, we did not consider it necessary to hear the learned Counsel for the petitioners and the learned Counsel for the respondents in regard to the other two grounds urged in support of these writ petitions.

49. For the reasons stated above, we allow these two writ petitions and issue a writ in the nature of quo warranto declaring that the appointment of respondent-2 Justice Mir Iqbal Hussain Commission as illegal and invalid and a further direction in the nature of mandamus directing the respondents in these two writ petitions to forbear from enforcing the impugnd Notification dated 18th May, 1977. Having regard to the circumstances of these cases, we award cos"s to the petitioners in each of these writ petitions, fixing Advocate"s fee at Rs. 500 in each of these cases as against the first respondent the State of Karnataka.

Lal, J. I agree.