*** THE HON'BLE SRI JUSTICE B KRISHNA MOHAN**

+ WRIT PETITION Nos. 26642 and 24358 of 2022

% 06.07.2023

WRIT PETITION No. 26642 of 2022:

Between:

K.K. Sherwani, S/o. M.K. Sherwani, aged about 57 years, Advocate, R/o. Phase-I/86, Praneeth Natures Bounty, Bowrampet, Hyderabad 500 043.

….Petitioner

And

$ 1. The State of Andhra Pradesh, through its Principal Secretary, Minorities Welfare (IDM) Department, Secretariat, Velagapudi, Amaravati
2. Dr. Amd. Imtiaz, Principal Secretary, Minorities Welfare (IDM) Department, Secretariat, Velagapudi, Amaravati.

….Respondents

WRIT PETITION Nos. 24358 of 2022:

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….Respondents

! Counsel for the petitioners : Sri Vangala Sailaja
Sri. V.S.R. Anjaneyulu,
Senior Counsel.

^ Counsel for the respondents : Sri. P. Sudhakar Reddy
Additional Advocate General
Sri. P. Veera Reddy,
Standing Counsel for the 2nd respondent.

<Gist:

>Head Note:

? Cases referred:

[1] 2020 (5) ALT 554 (S.B)
[2] 2020 (6) MLJ 140
[3] W.P. (MD) No. 8172 of 2008
[4] AIR 1985 SUPREME COURT 1416
[5] 2003 (1) UPLBEC 312
[6] AIR 1962 SC 1172
[7] AIR 1968 SUPREME COURT 1513
[8] AIR 1971 CALCUTTA 178
[9] AIR 1955 ANDHRA 156
[10] AIR 1986 SC 1173
[11] 2006 (2) ALT 76
[12] 1987 (Supp) Supreme Court Cases 93
[13] (2000) 3 Supreme Court Cases 171

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….Respondents

DATE OF ORDER PRONOUNCED: 06.07.2023.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

1. Whether Reporters of Local newspapers may be allowed to see the Order? Yes/No

2. Whether the copies of order may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair Copy of the Order? Yes/No

JUSTICE B KRISHNA MOHAN

THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION Nos. 26642 and 24358 OF 2022

COMMON ORDER:

Heard the learned Senior Counsel Sri. V.S.R. Anjaneyulu for the petitioner, the learned Additional Advocate General for the respondents and the learned Senior Counsel Sri. P. Veera Reddy for the 2nd respondent.

2. The Writ Petition No. 26642 of 2022 is filed questioning the G.O.Ms.No.30, Minority Welfare (IDM) Department dated 13.08.2022 issued by the 1st respondent as violative of Article 14 of the Constitution of India and the provisions of the Waqf Act, 1995 and for initiation of the Criminal Contempt proceedings against the 2nd respondent under the provisions of the Contempt of Courts Act, 1971.

3. The Writ Petition No. 24358 of 2022 is filed questioning the show cause notice issued vide Memo No.1741160/DM/A/1/2022 dated 13.07.2022 by the 1st respondent as violative of Article 14 of the Constitution of India and the provisions of the Waqf Act, 1995 and for initiation of Criminal Contempt proceedings against the 2nd respondent under the provisions of the Contempt of Courts Act, 1971.

4. The learned Senior Counsel for the petitioner submitted that the petitioner is a practicing Advocate for the last thirty (30) years with the enrolment No. 131/AP/1991 of Andhra Pradesh Bar Council and the Computer code No. 13699 given by the Registry of the Hon'ble High Court of Andhra Pradesh. He has got good practice in different Courts apart from the High Court of Andhra Pradesh. Under section 14 of the Waqf Act, 1995, the 1st respondent constituted the Andhra Pradesh State Waqf Borad (henceforth referred as Board) vide G.O.Ms.No. 119, Muslim Welfare (IDM) Department dated 30.10.2015 with effect from 08.09.2015 pursuant to the bifurcation of the State. The respondent No. 1 reconstituted the board vide G.O.Ms.No. 10, Minority Welfare (IDM) Department dated 26.03.2018 appointing the members under section 14 (9) and 15 of the Act for a term of five (5) years from the date of notification and the term of the board was up to 26.03.2023.

5. The 2nd respondent was a member of the board under section 14 (1) (e) of the Act. While so, the 1st respondent issued show cause notice under section 99 of the Act vide Memo No. 346415/IDM/A1/2016 dated 03.07.2019 to explain as to why the board should not be superseded. Questioning the same, the petitioner and other members filed W.P.No. 8849 of 2019 to declare the said show cause notice dated 03.07.2019 as illegal. This Hon'ble Court vide common Order dated

24.01.2020 allowed the W.P.Nos. 9369, 9371, 9465 of 2019 by setting aside the G.O.Ms.No. 38 and 39 dated 15.07.2019. The respondent no.1 reconstituted the board with nine (9) members vide G.O.Ms.No. 5 Minority Welfare (IDM) Department dated 15.02.2022 nominating the six (6) members under section 14 (9) and 21 of the Act by continuing the three (3) existing members including the petitioner. Then the 1st respondent vide Memo No. 1741160/DM/A/1/2022 dated 13.07.2022 issued show cause notice under section 20(1)(b) of the Act calling for explanation within fifteen (15) days from the date of its receipt as to why appropriate action should not be taken for allegedly acting prejudicial to the interests of "Auqaf" and if no explanation is received within the time, it will be construed that the petitioner has no explanation to offer and action would be taken in terms of the Act.

6. The relevant portion of Section 20(1)(b) of the Act reads as follows:

> "20. Removal of Chairperson and Member-(1) The State Government may, by Notification in the Official Gazette, remove the Chairperson of the Board or any Member thereof, if he-
>
> a) xxxx
>
> b) refuses to act or is incapable of acting or acts in a manner which the state Government after hearing any explanation that he may offer, *considers to be prejudicial to the interests of the Auqaf*"

7. The impugned Show cause notice dated 13.07.2022 reads as follows:

> "In the light of contents of the Show-cause Notice Dt: 03.07.2019 and the order dt: 09.02.2022 passed in W.P.No.795 of 2022, the Government has "decided to initiate action" by issue of Show-cause Notice to Sri. K.K.Sherwani for taking appropriate action on the allegations made against him."

8. It is further contended that one Habeebur Rahman claiming to be a social worker filed W.P.No.795/2022 with the following prayer:

> " to declare the action of the 2nd respondent (therein) in not disposing off his representation Dt: 30.09.2021 and not transferring the case to irregularities corruption "by the members of Waqf Board" to help certain persons strategic omission on part of the Principal Secretary Minority Welfare Dept. and CEO of A.P. State Waqf board in lodging report for corruption as illegal, arbitrary and unconstitutional and to direct the 3rd respondent to conduct preliminary enquiry pertaining to the irregularities stated in the show cause Notice Dt:30.07.2019 issued by the Prinicipal Secretary Minority Welfare Department."

9. The respondents in W.P.No. 795/202 are as hereunder:

(1) State of Andhra Pradesh, rep. by "its Chief Secretary", Government of Andhra Pradesh, Secretariat, Velagapudi, Amaravati, Guntur District,

(2) 'The Chief Secretary", Government of Andhra Pradesh, Secretariat, Velagpudi, Amaravati, Guntur District and

(3) The Director, Central Bureau of Investigation, Plot No. 5-B, CGO Complex, Lodhi Road, New Delhi.

10. The penultimate para (3) of the order in W.P.No.795/2022 dated 09.02.2022 reads as follows:-

"Having regard to the nature of the prayer, this W.P is disposed of directing the "2nd respondent" to consider the representation Dt: 30.09.2021 and pass an appropriate order in accordance with governing law and rules expeditiously but not later than eight (8) weeks from the date of receipt of copy of this order and communicate the same to the petitioner."

11. But in this Writ Petition, the affected parties were not impleaded. The said non-impleadment of the affected parties was a collusive act with deliberate intention. Taking advantage of the same, the respondent No.1 issued show cause notice dated 13.07.2022 vide Memo No. 1741160/DM/A/1/2022 stating that:

"As to why appropriate action shall not be taken against you "for the allegations made in the complaints", you are acting prejudicial to the interest of the auqaf and therefore, you are hereby called upon to submit your explanation within 15 days from the date of receipt of this Show-cause Notice"

12. The respondent No.1 claims that it has enclosed copies of

i. Order Dt: 09.02.2022 in W.P.No. 795/2022 of the Hon'ble Court

ii. Complaint Petition Dt: 16.05.2022 received from the President, Muslim Right & Welfare, Vijayawada, Krishna District.

iii. Complaint Petition Dt: 16.05.2022 received from President, Muslim United Front, Vijayawada, Krishna District.

iv. Complaint Petition Dt: 30.05.2022 received from Sri. Khaleel Ahmed

v. Show Cause Notice Dt: 03.07.2019

13. But the copies of the representation dated 30.09.2021 of Habeebur Rahman and the Writ affidavit are not enclosed to the said

Notice. Further the respondent No. 1 vide the impugned Memo dated 13.07.2022 alleged as follows:

> "It has come to the Notice of the Government through the copy of the order Dt: 09.02.2022 passed by the Hon'ble High Court of A.P. in W.P.No. 795/2022"

14. It is further contended that there is no specific allegation against the petitioner vide Memo No. 346415/IDM/A1/2016, dated 03.07.2019 and the copy of the same was not enclosed to the impugned show-cause notice dated 13.07.2022. It was enclosed for the petitioners' reference to offer an explanation. Hence, the impugned show-cause Notice dated 13.07.2022 is contrary to the Section 20(1) (b) of the Waqf Act and it is liable to be declared as ultra vires of the said Provision.

15. Similarly, the representation said to have been submitted by Syed Nooruddin on a letter head of "Muslim Rights and Welfare Association" at page no.2, it was alleged as follows:-

> "It is a fact that he has filed many cases against the Board and Government itself disrupting the administration and causing loss to the Board. Even Sri S.B.Amzath Basha, Dy.C.M. is also made as party on his name. It is to wonder why the Govt. is not taking action against such person, when the Govt. can substitute by nominating any other Senior Advocate/Lawyer in his place and delaying for months and years for such an important matter which requires small decision. Some of the Writ Petitions filed by the individual member are W.P.Nos. 12854/2019, 2859/2020, 7528/2020, 2758/2021 and 2706/2021 etc."

16. Thus, except asserting that he is the President of "Muslim Rights and Welfare", he has not alleged in what way he is concerned and not explained his stand here to allege that the petitioner is not a Senior Advocate and filed the writ Petitions against the Board. Nothing further was alleged against the petitioner.

17. The relevant portion of the representation of Mr. Habeebur Rahman dated 16.05.2022 further reads as follows:

> "Meanwhile at least remove Mr. K.K. Sherwani the nominated member of A.P. State Waqf Board under the category of Bar council Members. It is submitted that neither Mr. K.K. Sherwani was Bar council member nor designated Senior Advocate, nor famous and prominent Advocate among Muslim community. Moreover he is facing severe allegations of grave irregularities in Waqf Board and show cause notice in 2019 under reference file also issued to him and till today he was not submitted any explanation on that".

18. These third parties might not be knowing the difference between the Senior Advocate and Designated Senior Advocate and they must have subscribed their signatures at the instance of some vested interests including the respondent no. 2. The 2nd respondent being an I.A.S Officer ought to have known the difference between a Senior Advocate and designated Senior Advocate. The Act contemplates Senior Muslim Advocate but not designated. Had he followed the provisions of the Act, the 2nd respondent could not have directed the petitioner to submit

his explanation for the above said allegations. The 2nd respondent also worked with the petitioner as a member of the Board and he knows about the stature of the petitioner as Senior Advocate. The petitioner is a busy practitioner before the CBI Courts, DRAT and the Hon'ble High Court. The petitioner filed W.P.No. 12854/2019 questioning the notification F.No. 05/KAS/AUC/NLR/2016-DM dated 29.08.2019 as illegal and the same was allowed vide order dated 31.12.2020 as it is contrary to the orders of the Hon'ble Division Bench and is without jurisdiction. The said order has become final.

19. The petitioner filed another W.P.No. 2706/2021 questioning the notification dated 18.01.2021 wherein the interim order was passed which is in force. The petitioner also filed W.P.Nos. 2859/2020, 7528/2020 and 2758/2021 for various reliefs. The 1st respondent is a party to all the above said Writ Petitions who got sufficient knowledge about various issues involved but sought for explanation of the petitioner under the impugned show-cause notice intentionally as he developed a personal grudge against the petitioner. When the issues are pending consideration before the competent Court/forum, initiation of action in respect of the said issues is an act of Criminal Contempt and interference with the administration of justice. Hence, he shall be dealt with under the provisions of the Contempt of Courts Act. Since the

respondent no.2 violated the various orders of this Hon'ble Court number of contempt cases are pending against him.

20. The counter affidavit filed by the 2nd respondent in W.P.(PIL) No. 24/2022 establishes that he has got prejudice against the petitioner, working with a predetermined mind and as such he can never be a person acting in fairness to exercise the provisions of the Act. Issuance of Show-cause notice dated 13.07.2022 is also an empty formality. At para 5 of the said notice it is stated that "the Government has decided to initiate action". If the respondents intended to take action under the orders of the Hon'ble High Court in W.P.No. 795/2022 dated 09.02.2022, the 2nd respondent therein shall have to take action but not by the respondents herein.

21. As stated supra, the petitioner filed W.P.No. 24358 of 2022 on 03.08.2022 questioning the Show-cause notice dated 13.07.2022. It was listed for admission on 04.08.2022 and time was sought for getting instructions. Hence, it was directed to be listed on 10.08.2022. The respondents took time to file counter by making a representation on 10.08.2022 and as such the matter was adjourned to 17.08.2022. Subsequently, the respondents filed separate counter affidavits engaging different counsels and thereafter it was not listed inspite of specific direction.

22. Then, as stated supra, the 1st respondent issued the impugned G.O.Ms.No. 30 Minority Welfare (IDM) Department dated 13.08.2022 and the penultimate para of it reads as follows:-

> "10. The Government has examined the matter keeping in view of the provision made under section 20 (1)(b) of Waqf Act, 1995 and hereby remove Sri K.K.Sherwani, as member of Andhra Pradesh State Waqf Board, Vijayawada with immediate effect.
>
> 11. Accordingly, the following notification shall be published in Extra-ordinary issue of Andhra Pradesh Gazette.
>
> **NOTIFICATION**
>
> In exercise of the powers conferred under Section 20 (1)(b) of Waqf Act, 1995, the Government hereby removes Sri K.K.Sherwani, as Member of Andhra Pradesh State Waqf Board, Vijaywada with immediate effect.
>
> (BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)"

23. It is further contended here that the above said notification published does not assert that it was issued " by order and in the name of the Governor of Andhra Pradesh". The said notification also does not refer any part of the impugned G.O except a part of para no. 11 which is contrary to the section 20 (1) (b) of the Act. The 1st respondent obtained acknowledgement for receipt of G.O.Ms. No. 30 on 14.08.2022 at 12.45 noon. As per Section 20 (1) (b) of the Act, the notification operates from the date of publication in the official Gazette and the published notification has to be communicated as the impugned G.O dated 13.08.2022 was served much prior to the

publication of the same in the official Gazette and as such it has no authenticity and it cannot be enforced.

24. The 1st respondent issued the show cause notice vide Memo No. 346415/IDM/A1/2016 dated 03.07.2019 in the matter of noticing of grave irregularities in the Andhra Pradesh State Waqf Board and proposal for supersession of the Board under Section 99 of the Waqf Act, 1995. Through the G.O.Ms. No. 10 Minorities Welfare (IDM) Department dated 13.03.2018, the Waqf Board was established by the Government with the following members:

ELECTED MEMBERS

1. Sri Jaleel Khan, MLA Elected u/s. 14(1)(b) (ii)
2. Sri. Shaik Khaja, Muthawalli Elected u/s. 14(1)(b)(iv)
3. Sri.K.M.Shafiuallah, Muthawalli Elected u/s. 14(1)(b)(iv)

MEMBERS NOMINATED U/S.14(1)

4. Sri. V.S.Ameer Babu Nominated u/s. 14(1)(c)
5. Smt. Shaheba Begum Nominated u/s. 14(1)(d) as Shia member and Women
6. Smt. Parveen Taj Nominated u/s. 14(1)(d) as Sunni Member and Woman
7. Sri. A.Md. Imtiaz, IAS (2nd respondent herein) Nominated u/s. 14 (1) (e) as Government Officer

MEMBERS NOMINATED U/S. 14(3)

8. Sri. K.M. Saifullah Nominated for the category u/s. 14 (1) (b)(i)
9. Sri. K.K.Sherwani (Petitioner herein) Nominated for the category u/s. 14(1)(b)(iii)

25. Some of the Board members filed W.P.No. 8849/2019 questioning the show cause notice dated 03.07.2019. After hearing both the parties, the matter was reserved for Judgment on 12.07.2019. Then the 1st respondent issued G.O.Ms. No. 38 and G.O.Ms. No. 39 dated 15.07.2019 and the same was challenged by the Board members in W.P.Nos. 9369 of 2019 and batch and filed I.A seeking suspension of the said G.Os pending the Writ Petition. Vide order dated 18.07.2019, Interim order of suspension of the said G.Os pending the said Writ Petition was ordered. The said Interim Order is in force pending disposal of the said Writ Petition. Though the respondents therein filed W.A.No. 218/2019, the same was disposed of without interfering with the Interim order granted dated 18.07.2019 and the appellants therein/respondents herein were directed to file vacate petition in the said I.A in the above said Writ Petition.

26. Subsequently, the W.P.Nos. 9369/2019 and batch were allowed setting aside the G.O.Ms.Nos. 38 and 39 dated 15.07.2019 vide order dated 24.01.2020 and the same became final. It was observed in the

said order that furnishing of the documents by the Board is essential to enable for submission of explanation to the allegations in the said show cause notice dated 03.07.2019. In fact, the said show cause notice dated 03.07.2019 was culminated into G.O.Ms.No. 38 and it was set aside along with the consequential G.O.Ms.No. 39 directing to supply the copies of the documents sought for. In violation of the above said direction of this Hon'ble Court, the respondents who were also the parties to the above said orders issued the show cause notice and brought the impugned G.O in to the existence on the ground that the reply to the show cause notice has not been submitted. The said show cause notice and the impugned G.O are in utter violation of the orders of this Hon'ble Court and as such the respondents are also liable for contempt under the Provisions of Contempt of Courts Act.

27. Though the show cause notice dated 03.07.2019 was received by all the members including the 2nd respondent and the petitioner herein along with the other Board Members who were all similarly situated, it was not proceeded with further. But with a *mala fide* intention, the impugned show cause notice dated 13.07.2022 was issued to the petitioner alone and merely on the ground of non- submission of explanation to it the impugned G.O.Ms.No. 30 dated 13.08.2022 has been issued removing the petitioner as a member of the A.P. State

Waqf Board with immediate effect as if the allegations are proved by conducting proper enquiry. The 2nd respondent has no locus to issue such impugned show cause notice and the impugned G.O as he is also a party to the earlier show cause notice dated 03.07.2019. It is nothing but a vindictive and mala fide action against the petitioner as he questioned the functioning of the board through the above said Writ Petitions.

28. The learned Senior Counsel for the petitioner also relied upon the following decisions:

1. In the matter of **Shaik Khaja Vs. State of Andhra Pradesh, rep. by its Secretary and others**[1]**, High Court of Andhra Pradesh, At Amaravati (Smt. T. Rajani, J)** reported in 2020 (5) ALT 554 (S.B), it was observed at para Nos. 8, 9, 13 and 14 as follows:

> "8. The show cause notice sets forth as many as five grounds, which includes the ground of grave irregularities committed by the Board. The show cause notice called upon the petitioners and the Board members to show cause within seven days from the date of receipt of the said notice as to why the Board should not be superseded. Following the said show cause notice, one of the board members Sk.Khaja, addressed a letter to the 2nd respondent Chief Executive Officer, Board on 05.07.2019, requesting him to provide certain material in order to enable him to submit explanation to the Government for the show cause notice. By virtue of a letter, dated

[1] 2020 (5) ALT 554 (S.B)

15.07.2019, said Sk. Khaja requested the 1st respondent to grant additional time beyond seven days for submitting the explanation. It is not disputed that the documents sought for in the letter dated 05.07.2019 were not supplied to the said Sk.Khaja. Since one of the board members have sought for the documents and allegations are common to all the board members, the submission of the petitioners' counsel is that the petitioners did not make a separate application for the said documents, which would suffice to answer the show cause notice. By virtue of letter to the Public Information Officer, right to information section, dated 25.07.2019, Sk.Khaja sought only copy of the report of the State Wakf Board in order to reply to show cause notice. But even the Public Information Officer did not furnish the said report.

The respondents being aware that the information sought for is relevant to answer the allegations mentioned in the show cause notice, failed to supply the documents and even the request to extend the time to answer the show cause notice also was not accepted by the respondents. When the very show cause notice is impugned before this court in the above said writ petition, and when the documents sought for by the board members to reply for the show cause notice are not furnished, the act of the respondents in passing the impugned order superseding the board is on the face of it a contemptuous act.

9. …
10. …
11. …
12. But the main contentious issue is whether the respondents are justified in passing a final order while the judgment in the writ petition is pending and without furnishing the documents, which are sought for by the board members. The provision to section 99(1) of the Act, specifies that reasonable time has to be given to the board to show cause why it should not be superseded. In this case, the reasonable time would be till the documents are furnished

by the respondents to the Board members to enable them to explain the allegations made in the show cause notice. Without giving such reasonable time to the board members, passing of the impugned order is unreasonable and hence, the same is liable to be set aside. The other grounds raised in the counter were not argued, hence not dealt with.

With the above observations, the Writ Petitions are allowed setting aside the G.O.Ms.No.38 Minorities Welfare (IDM) Department, dated 15.07.2019, and the consequential G.O.Ms. No. 39 dated 15.07.2019. As a sequel, the miscellaneous applications pending, if any, shall stand closed."

2. In the matter of **M. Imam Hussain, Advocate v. Government of Tamil Nadu (Madras) (Madurai Bench)** [2](Sri.G.R.Swaminathan,J) reported in 2020 (6) MLJ 140, it was observed at para no. 21 as follows:

"21. Thus, both the questions of law raised in this Writ Petition are answered as follows:

a) When the Bar council of the State does not have a Muslim member, the electoral college will not fall vacant. It will then comprise the Muslim ex-members of the Bar Council. Only if there are no Muslim sitting or ex-members of the Bar Council and it is not possible to constitute the electoral college, the Government may nominate any senior Muslim advocate from the state to fill up the category contemplated by Section 14(1)(b)(iii) of the Act.

b) The expression "any senior Muslim Advocate" occurring in the proviso to Section 14 (1)(b)(iii) of the Act is not confined to designated senior counsel. It also includes those Muslim

[2] 2020 (6) MLJ 140

advocates who are 45 years of age and who are in practice for not less than 10 years preceding the date of consideration for nomination."

3. In the matter of **Mallika vs. Union of India rep. by its Secretary and other**[3]**,** reported in **W.P. (MD) No. 8172 of 2008** dated 25.02.2020 of Madras High Court (Madurai Bench) (DB), it was observed at para nos. 18, 20 and 23 as follows:

"18. Having considered the aforesaid decisions and having gone through the ratios thereof, the position that emerges is that a Senior Advocate of eminence can be appointed by a District Magistrate and upon his engagement, such an Advocate shall take over the entire process of the trail to the extent of exclusion of the Public Prosecutor and would be the absolute in-charge of the litigation till its culmination. Engagement therefore supervenes and brings into existence a Lawyer engaged on behalf of the State to lead the prosecution and to conduct it, keeping in view of the fact that he had been engaged as Senior Advocate of eminence.

19….

20. The question, which has cropped up now remains to be answered namely as to who would be that Senior Advocate of "eminence" and his availability, more particularly, in the Subordinate Courts for conducting the prosecution keeping in view the grave nature of the offences and the consequences thereof in order to ensure that justice is meted out in cases arising out of the special provisions of the Scheduled Caste and Scheduled Tribes Act and the Rules framed thereunder. For this, we have to take recourse to the ordinary meaning of the word 'eminence', as it has not been defined in the 1995 Rules. To aid the understanding of the word 'eminence', we may adopt the dictionary meaning that has been explained in various Dictionaries. We could lay out hand on Oxford Dictionary (23 Volumes) edited by Sir John Murray. The aid Dictionary defines that a person or object would be considered eminent if the

[3] W.P. (MD) No. 8172 of 2008

same is towering above other surrounding persons or objects. It is exalted, dignified in rank or station that makes a person eminent on account of his distinguished characters or attainments by qualities that are remarkable in degree and are conspicuously perceptible. They are signal in nature and noteworthy, giving importance to the personality of the person possessed all such characteristics. This transformed personality projects eminence in Society and portrays a degree of elevation with distinguished superiority compared to others. Such recognition and reputation is an outcome of intellectual and moral attainment or the possession of such qualities in sum and substance, it is a recognition of excellence and a matter of distinction acknowledging the superiority of the individual in his profession or calling of duty.

21…

22…

23. This Division Bench Judgment is a further reflection on the manner and mode in which the eminence of a person particularly in the field of academics, could be assessed and for that the Division Bench gave indicators in Paragraph Nos. 35 and 36 holding that while assessing the eminence of a person, the stage of formulation involves agenda setting and laying down procedural antecedents before leading to the final decision making process. Paragraph Nos. 35 and 36 of the said decision are extracted hereinunder:

"35. The procedures which the State adopts in making appointments to posts of members in a statutory commission like the Higher Education Service Commission **must be consistent with the standards and norms of fairness, which animate Article 14. Structural fairness in the decision making process** leading up to the ultimate appointment of a member of the Commission is a requirement of he guarantee of equality and equal opportunity. These norms must be observed so that **institutional processes meet the need for fair, transparent, objective and accountable governance.** Basically, fair procedure in making appointments to the position of a member in the Commission must involve **four stages:**

i. **Formulation;**
ii. **Opportunity;**
iii. **Decision making; and**

iv. Selection

36. The stage of formulation involves agenda setting and laying down procedures antecedent to decision making. This has to be laid down in a manner which is consistent with the governing statutory provision. The stage of formulation would among other things cover the manner in which vacancies would be notified so as to be brought to the knowledge of the field of eligible candidates under the statute. **It must involve the constitution of a committee** or team consistent with the statute-for processing the nominations or applications received. The stage of formulation may involve the constitution of a Search committee **which can tap the best candidates.** The stage of formulation also involves setting down **procedures** which will be followed and **time-lines.** The second stage involving opportunity enables interested and eligible persons to respond to the notification so that candidatures across a broad spectrum of sources indicated in the statute are considered. If a search committee has be constituted, the Committee will facilitate the process of identifying prospective candidates. **Personnel forming part of the Search Committee must possess knowledge, administrative experience and domain expertise. Members of the selection panel or Search Committee must be subject to rules of exclusion on the ground of bias and conflict of interest. The third stage** of decision making involves the assessment of candidatures on the basis of applicable statutory norms. Where appropriate, a procedure of short listing may be envisaged where the number of candidates is large. The final stage is the stage of selection. Decision making must be based on eligibility and suitability as defined by the statute. There must be documentation of the process at each stage. The material on the basis of which the decision is arrived at must show an application of mind to the credentials, competence and integrity of candidates. We have indicated the **broad parameters and guidelines.** The underlying principle is that institutional processes must be well defined, publicized and fair. **That will at least in some measure ensure a movement to a system where competence and merit prevail over patronage, transparency prevails over secrecy and the prevailing culture of cynicism is replaced by accountable and responsive governance which promotes public confidence in our institutions."**"

4. In the matter of **Union of India and others vs. Tulsiram Patel and others**[4] in Civil Appeal Nos. 6814 of 1983 and batch dated 11.07.1985 (Y.V.Chandrachud, C.J.I and V.D.Tulzapurkar, J and R.S.Pathak, J and D.P.Madon,J and M.P.Thakkar, J) reported in AIR 1985 SUPREME COURT 1416, it was observed at para Nos. 84, 85, 86 as follows:

> " 84. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confirmed? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process including there in quasi-judicial and administrative processes. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria "causas" as stated in (1605) 12 Co.Rep.114, that is, " no man shall be a judge in his own cause". Coke used the form 'aliqus non debet esses judex in propria causa quia non potest esses judex et pars" (Co.Litt.141 a), that is "no man ought to be a judge in his own cause, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is "no one can be at once suitor and judge" is also at times used. The second rule and that is the rule, with which we are concerned in these appeals and Writ petitions is "audi alteram partern", that is, "hear the other side". At times and Particularly in continental countries the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, nameluy, "qui aliquid statuerit aequum fecerit", that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have

[4] AIR 1985 SUPREME COURT 1416

done what is right" or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done".

85. The above two rules and their corollary are neither new nor were they the discovery of English Judges. They were recognized in many civilizations and over many centuries. Roman Law recognized the need for a judge to be impartial and not to have a personal interest in the case before him (Digest V.1.17) and Tacitus in his "Dialogus" referred to this principle. Under Roman Law a judge who heard a cause in which he had an interest was liable as on a quasi-delict to the party prejudiced thereby (Justinian's Institutes IV, 5 pr.; as also Justinians Codex III, 5, 1). Even the Kiganda tribesmen of Buganda have a old proverb which literally translated means "a monkey does not decide an affair of the forest (see "Law and Justice in Buganda" by E.S Haydon, P.333). The requirement of he arriving both sides before at a decision was part of the judicial oath in Athens. It also formed the subject-matter of a proverb which was often referred to or quoted by Greek playwrights, as for instance, by Aritophanes in his comedy "The Wasps" and Euripides in his tragedies " Heracleidae" and " Andromache", and by Greek orators, for instance, Demosthenes in his speech "De Corona". Among the Romans, Seneca in his tragedy "Medea" referred to the injustice of coming to a decision without a full hearing. In fact, the corollary drawn in Boswell's Case is taken from a line in Seneca's "Medea". In the Gospel according St. John (vii, 51), Nicodemus asked the chief priests and the Pharisees, "Doth out law judge any man, before it hear him, and know what he doeth?" Even the proverbs and songs of African tribesmen, for instance, of the Lozi tribe in Barotseland refer to this rule (see "The Judicial Process Among the Barotse of Northern Rhodesia" by Max Gluckman,p.102).

86. The two rules "nemo judes in causa sua" and "audi alteram partem" and their corollary that justice should not only be done but should manifestly be seen to be done have been recognized from early days in English courts. References to them are to be found in the year Books-a title preferred to the alternative one of "Books of Years and terms"-which were a regular series, with a few gaps, of law reports in Anglo-Norman or Norman French or a mixture of English, Norman-French and French, which had then become the court language, from the 1270s to 1535 or, as printed after the invention of

the printing press, from 1290 to 1535, that is, from the time of Edward II to Henry VIII. The above principles of natural justice came to be firmly established over the course of centuries and have become a part of the law of the land. Both in England and in India they apply to civil as well as to criminal cases and to the exercise of judicial, quasi-judicial and administrative powers. The expression "natural justice is now so well understood in England that it has been used without any definition in statutes of Parliament, for example, in section 3(10) of the Foreign Compensation Act, 1969, and section 6 (13) of the Trade Union and Labour reforms Act, 1974, which was later repealed by the Trade Union and Labour Relations (Amendment) Act, 1976. These rules of natural justice have been recognized and given effect to in many countries and different system of law. They have now received international recognition by being enshrined in Article 10 of the Universal Declaration of Human Rights adopted and proclaimed by the general Assembly of the United Nations by Resolution 217A (III) of December 10, 1948. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which came into force on September 3, 1953, and Article 14 of the International Covenant on Civil and Political Rights adopted by the General Assembly Resolution 2200A (XXI) of December 16, 1966 which came into force on March 23, 1976.""

5. In the matter of **STATE OF UTTAR PRADESH *vs.* R.S.GUPTA, HJS, SPECIAL JUDGE (DAA)**[5] dated 03.08.2002, High Court of Allahabad (DB) reported in 2003 (1) UPLBEC 312, it was observed at para no. 13 as follows:

" 13. There are three Latin Maxims (i) 'Nemo debet esse judex in propria cause': (ii) 'Nemo judex in causa sua' - the first two means "No man ought to be a Judge in his own cause" and (iii) 'Nemo potent esse simual actor et judex' which means "No one can be at once suitor and Judge".

[5] 2003 (1) UPLBEC 312

13.1. In Gullapalli Nagteswararao and Ors. v. Stale of Andhra Pradesh and Ors., AIR 1959 SC 1376, it was held by the Supreme Court as under:-

> ".....The principles governing the "doctrine of bias" vis-a-vis judicial Tribunals are well-settled and they arc : (i) no man shall be a Judge in his own cause (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the Tribunal"; and that "any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a Judge, and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias."

13.2. The aforementioned declaration of law was reiterated by a 5 Judges Bench in Mineral Development Limited v. The State of Bihar and Anr., AIR 1960 SC 468.

13.3. In. J. Mohapatra and Co. and anothers v. State of Orissa and Anr., (1984) 4 SCC 103, it was observed thus :-

> ".....Nemo judex in causa sua, that is, no man shall be a Judge in his own cause, is a principle firmly established in law. Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in Courts of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing in camera. Justice can never be seen to be done if a man acts as a Judge in his own cause or is himself interested in its outcome. The principle applies not only to judicial proceedings but also to quasi-judicial and administrative proceedings.....,."

13.4. In Ashok Kumar Yadav and Ors. v. State of Haryana and Ors., (1985) 4 SCC 417, a 5 Judges Bench of the Apex Court held as follows :-

> ".....it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the Judge is actually biased or in fact

decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this Rule is that justice must not only be done but must also appear to be done and this Rule has received wide recognition in several decisions of this Court. It is also important to note that this Rule is not confined to cases where judicial power stricto sensu is exercised.....This Court emphasized that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship ox family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the pan of the authority making the selection.

13.5. In Union of India v. Tulsiram Patel, AIR 1985 SC 1416, a 5 Judges Constitution Bench of the Apex Court held as follows :-

".....Over the years by a process of judicial interpretation two Rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative processes. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first Rule is "memo judex in causa sua" or "nemo debet esse judex in propria ccrnsas" as stated in (1605) 12 Co. Rep. 114. that is, "no man shall be a Judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa qnia non protect esse judex et pars" (Co. Litt. 141-a), that is, "no man ought to be a Judge in his own cause, because he cannot Act as Judge and at the same time be a party". The form "nemo protest esse simid actor et judex", that is, "no one can be at once suitor and Judge" is also at times use....." (Vide Paragraph 84) X X X X "The two Rules "nemo

judes in causa sua" and "audi alter am partem " and their corollary that justice should not only be done but should manifestly be seen to be done have been recognized from early days in English Courts.....Both in England and in India they apply to civil as well as to criminal cases and to the exercise of judicial, quasijudicial and administrative powers....." (Vide Paragraph 86) X X X X ".....Arbitrariness can take many forms and shapes but whatever form or shape it takes, it is none the less discrimination....."(Vide Paragraph 90) X X X X ".....There are well-defined exceptions to the nemo judex in causa sua Rule as also to the audi alter am partem rule. The nemo judex in causa sua Rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. Mohapatra and Co. v. State of Orissa, (1985) 1 SCR 322, 334-5 : AIR 1984 SC 1572, 1576-7)....."" (Vide Paragraph 101).

13.6. These maxims and declaration of laws clearly prohibited the respondent in his issuing the impugned directions and thus they are wholly arbitrary and violative of Article 14 of the Constitution of India."

6. In the Criminal Appeal Nos. 128 and 129 of 1959 dated 21.01.1962 **Pratap Singh and another Appellants *vs*. Gurbaksh Singh and others**[6] reported in AIR 1962 SUPREME COURT 1172, it was observed at para No. 10 as follows:

"10. What, after all, is contempt of court?

"To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation." (Oswald's Contempt of Court, 3rd Edition, page 6.)

We are concerned in the present case with the second part, namely, "to interfere with or prejudice parties litigant during the litigation". In the case

[6] AIR 1962 SC 1172

under our consideration the respondent had instituted a suit in the court of the Senior Subordinate Judge, Amritsar, in respect of his grievance that a certain sum of money was being illegally deducted from his salary. On behalf of the respondent it was alleged that he had no further departmental remedies to exhaust, inasmuch as the order by which a part of his salary was being deducted was a final order made by the Punjab Government after considering the respondent's explanation. On behalf of the appellants it has been contended that the respondent had still a further remedy by way of an appeal to the Governor. That is a matter with which we are not really concerned, as it relates to the question whether the respondent had or had not violated the terms of the circular letter. We are concerned with the action that was taken against the respondent on the footing, right or wrong, that he had violated the instructions. Of the circular letter. His suit was pending in the court of the Senior Subordinate Judge, Amritsar. When the summons in the suit was served on the Government, the Under Secretary to Government, drew the attention of one of the appellants to the circular letter and asked the latter to intimate to Government what action he proposed to take against the respondent. Appellant Pratap Singh then forwarded the memorandum of the Under Secretary to the Conservator of Forests, South Circle, and in his forwarding endorsement Pratap Singh directed that the respondent should be proceeded with in accordance with the instructions in the circular letter and that a copy of the proceedings recorded and orders passed should be forwarded to him. It appears, therefore, that appellant Partap Singh was not merely content with forwarding the memorandum of the Under Secretary. He directed his subordinate officer to take action against the respondent. In accordance with that direction a proceeding was drawn up against the respondent and the appellant Bachan Singh was asked to enquire into it. The appellant Bachan Singh then drew up a charge-sheet and in that charge-sheet it was stated that the respondent had gone to a court of law before exhausting all his departmental remedies. What would be the effect of these proceedings on the suit which was pending in the court of the Senior Subordinate Judge, Amritsar ? From the practical point of view, the institution of the proceedings at a time when the suit in the court of the Senior Subordinate Judge, Amritsar, was pending could only be to put pressure on the respondent to withdraw his

suit, or face the consequences of disciplinary action. This, in our opinion, undoubtedly amounted to contempt of court. There are many ways of obstructing the Court and "any conduct by which the course of justice is perverted, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while his suit is pending; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts". (Oswald's Contempt of Court, 3rd Edition, page 87). The question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent, then there can be no doubt that in law the appellants have been guilty of contempt of court, even though they were merely carrying out the instructions contained in the circular letter."

7. In the matter of **Govind Sahai and another vs. State of U.P**[7] Criminal Appeal No. 65 of 1966 dated 30.04.1968 reported in AIR 1968 Supreme Court 1513, it was observed at para no. 14 as follows:

"14. In the instant case, the passing of the orders of expulsion, by the two appellants, against the second respondent, and the filing of a supporting affidavit, in the suit by the second appellant, clearly indicate that it was a deliberate attempt, by the appellants, to interfere with, or prejudice the second respondent, in the conduct of the litigation, instituted by him. It is no answer that the action, by way of expulsion, was taken on the basis of the Resolution, of the All India Congress Working Committee, and to enforce discipline, in the Congress Organization. As emphasized by Das, J., in Pratap Singh's Case(.), 'any conduct, which interferes with, or prejudices parties litigant, during the litigation, is undoubtedly Contempt of Court'. The High Court, in

[7] AIR 1968 SUPREME COURT 1513

this case, was justified in holding the appellants guilty of contempt. We agree with the said conclusion."

8. In the matter of **Manasa Ram Zade vs. M/s. Hindusthan Steel Ltd.[8],** Criminal Misc. Case No. 179 of 1969, dated 24.07.1969, Calcutta High Court reported in AIR 1971 CALCUTTA 178, it was observed as follows:

" …. We have therefore, no doubt that in this case the Chairman must be said to have interfered with the course of justice in the petitioner's suit before the Munsif at Durgapur and this amounts to contempt of the said court."

9. In the matter of **D.Jones Shield vs. N. Ramesam and others[9],** Criminal Misc. Case No. 1360 of 1954 dated 28.01.1955, Andhra High Court, (DB) reported in AIR 1955 ANDHRA 156, it was observed at para no. 8, 9, 10, 11 and 12 as follows:

"8. Before we consider the arguments advance, it will be convenient for us at this stage to notice the law on the subject briefly. Courts have always found it difficult to give a comprehensive and complete definition of 'contempt of Court'. But the definition of these words given in the leading case – "Brich v. Walsh', 10 Irish Eq. B.93 (A), has been accepted by Courts in India. There, the court gave three categories of contempt (i) contempt in respect of orders of Court, (ii) contempt by letters or pamphlets addressed to the Judge who is to decide the case with the intention either by threats or flattery or bribery to influence his decisions and (iii) constructive contempt depending upon inference of an intention to obstruct the course of justice.

9. Before 1926, it was held that, in matters of contempt a High Court possesses the same jurisdiction as the old King's Bench in England had. Act

[8] AIR 1971 CALCUTTA 178
[9] AIR 1955 ANDHRA 156

12 of 1926 expressly empowered High Courts to exercise the same jurisdiction, power and authority in respect of courts subordinate to them as they have in respect of contempts of themselves. The Constitution of India expressly saved the powers of the High Court to punish for contempt of court. The Parliament by Act 32 of 1952 repealed the earlier Acts and restated in express terms that 'subject to the provisions of sub-s. (2) every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts sub ordinate to it, as it has and exercises in respect of contempts of itself.'

9. It is, therefore, obvious that if really the respondents are guilty of contempt of the Sessions court this court can commit them for contempt. It may also be mentioned that this court will take a serious view, if public officers of responsibility act in such a manner as to obstruct the course of justice or disobey to implement the orders of court, for such acts will undermine the prestige of courts and set a bad example to the public. At the same time, the filing frivolous applications for contempt against public officers with a view to harass them is equally reprehensible and the court will give exemplary costs against such abuse of process of this court.

10. On the first point viz., that a parallel enquiry conducted conducted by an officer, when the same subject is 'sub judice' amounts to a contempt of court, reliance is place upon a Full Bench decision of the Patna High Court in 'King v. Parmanand' AIR 1949 Pat 222 (B). There Narayan J., stated the principle at p.229 as follows:

" …… It must be pointed out that any enquiry with regard to a matter which is 'sub judice' is bound to interfere with the even and ordinary course of justice. It is a cardinal principle that when a matter is pending for decision before a court of justice, nothing should be done which might disturb the free course of justice and this court will discountenance any attempt on the part of any executive official, however high he may be, to prejudice the merits of a case and to usurp the functions of the court which has got seisin of the case.

Such a practice is fraught with immense danger and I was surprised to hear the learned Advocate contending that a parallel enquiry could be started by the Government. If we accede to the argument of the learned Advocate

General that a parallel enquiry can be started we will be opening the door for contempt and impediment in the course of justice. Once the principle is accepted that the Government are free to hold a separate enquiry, it would be impossible to impose any limit as in the nature and the scope of such an enquiry."

11. We respectfully accept the aforesaid weighty observations as laying down the correct law on the subject. But the question is whether in the present case, respondent 1 started a parallel enquiry when the Criminal Revision was pending before the Sessions Judge. From the facts already stated and accepted by us, it is manifest that respondent 1 did not conduct any parallel inquiry during the crucial period. Indeed respondent 1 did not make any enquiry on the application filed by the petitioner on 03.04.1954 and rejected it on the ground that no action was necessary as the Additional First Class Magistrate's Court had held that the complaint was false alter due enquiry and on merits and that the said decision was binding on him. Respondent 1, therefore, not only did not make any enquiry pending the criminal proceedings before the Additional First Class Magistrate, but rejected it on the ground that no action was necessary as that decision was binding upon him. This petition was rejected even before the Criminal Revision Petition was filed in the Sessions Court. This act on the part of respondent 1 cannot, therefore, be held to be one in contempt of court."

10. In the matter of **Ramachander vs. Union of India and others**[10] Civil Appeal No. 1621 of 1986 dated 02.05.1986 reported in AIR 1986 Supreme Court 1173(A.P.SEN,J and B.C.RAY,J), Supreme Court, Delhi, it was observed at para nos. 4 and 5 as follows:

"4. The duty to give reasons is an incident of the judicial process. So, in R.P. Bhatt v. Union of India & Ors., (C.A. No. 3165/81 decided on December 14, 1982) this Court, in somewhat similar circumstances, interpreting r.27(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 which provision is in pari

[10] AIR 1986 SC 1173

materia with r.22(2) of the Railway Servants (Discipline & Appeal) rules, 1968, observed :

"It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non compliance has resulted in violation of any of the provisions of the Constitution of India or in the failure of justice ; (2) whether the findings of the disciplinary authority are warranted by the evidence on record ; and (3) whether the penalty imposed is adequate, inadequate or severe, and pass orders confirming, enhancing, reducing or setting aside the penalty, or remit back the case to the authority which imposed or enhanced the penalty, etc."

It was held that the word 'consider' in R.27(2) of the Rules implied 'due application of mind'. The Court emphasized that the Appellate Authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decisions. There was in that case, as here, no indication in the impugned order that the Director-General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any Findings on the crucial question as to whether the Findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms:

"(1) In terms of rule 22(2) of the Railways Servants (Discipline & Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railways, new Delhi imposing on you the penalty of removal from service and have observed as under :

(a) by the evidence on record, the findings of the disciplinary authority are warranted ; and

(b) the penalty OF removal From service imposed on you is merited.

(2) The Railway Board have therefore rejected the appeal preferred by you."

5. To say the least, this is just a mechanical reproduction of the phraseology of r.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall the evidence on record with a view to decide whether the findings arrived at by the disciplinay authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty or removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of r.22(2) of the

Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

11. In the matter of **Sk. Abdul Saleem vs. A.P. State Waqf Board, rep by its Executive Officer, Hyderabad and others**[11] W.P.No. 11149 of 2005 dated 05.12.2005, High Court of Judicature, Hyderabad (SB) reported in 2006 (2) ALT 76 (S.B), it was observed at para nos. 9, 10 and 11 as follows:

"9. On a plain reading of Sub-section (1) of Section 67, it is clear that the District Committee constituted for the purpose of supervision or management of a Wakf is entitled to continue to function until it is superseded by the Board or until the expiry of its term whichever is earlier. Sub-section (2) prescribes a detailed procedure for superseding the Committee under which it is mandatory to issue a prior notice to the committee setting forth the reasons for the proposed action and calling upon the committee to show cause as to why such action shall not be taken. Sub-section (2) further makes it clear that the order of supersession can be passed only where the Board is satisfied that the committee is not functioning properly and satisfactorily or that the order of supersession shall be "for the reasons to be recorded in writing". The said words employed in Sub-section (2) make it clear that the Board while passing an order of supersession is bound to record reasons. In other words, the satisfaction of the Board shall be reflected from the reasons assigned in the order of supersession.

10. That a part, as held by the courts in a catena of decisions an order which is devoid of reasons, particularly if it is penal in nature, is in violation of principles of natural justice and constitutes a valid ground for exercising judicial review under Article 226 of the Constitution of India (vide Damoh Panna Sagal Rural Regional Bank v. Munna Lal Jain 2005 (1) SCJ 59, Cyril Lasrado v. Jaliana Maria Lasrado and Union of India v. Essel. Mining and Industries Ltd.

[11] 2006 (2) ALT 76

> 11. In the light of the settled principles of law and particularly having regard to the language employed in sub-section (2) of Section 67 of the Act, I am of the opinion that it is mandatory for the Board to record the reasons while passing an order of supersession of the Committee of Management."

29. On the other hand, the learned Senior Counsel appearing for the 2nd respondent relying upon the counter affidavit of the 2nd respondent submits that the petitioner claims himself as an Advocate and not as a Senior Advocate. The petitioner has not given any particulars of filing of cases in the various Courts including the High Court of Andhra Pradesh at Amaravathi and as well as in the High Court at Hyderabad. Be that as it may, the A.P. State Waqf Board was established through the G.O.Ms. No. 119 Minorities Welfare (SDM) Department dated 30.10.2015 and the board was reconstituted vide G.O.Ms.No. 10 dated 13.03.2018. The term of the Board members was in accordance with the provisions of the Act. The petitioner was nominated in the category under section 14 (1) (b) (iii) by the 1st respondent in exercise of the powers vested under section 14 (3) of the Waqf Act, 1995. It is true that the W.P.No. 1369 of 2019 and batch was disposed off by a common order dated 24.01.2020 and the G.O.Ms.No.38 and G.O.Ms.No.39 dated 15.07.2019 were issued. The 1st respondent issued the show cause notice through a memo No. 1741160/DM/A/1/2022 dated 13.07.2022 in view of the serious allegations made against the petitioner in the complaints received by the 1st respondent.

The documents referred in the said show cause notice were enclosed and sent along with the show cause notice to the petitioner. The copy of the representation dated 30.09.2021 and the writ affidavit of the Habeebur Rehman should have been obtained by the petitioner on his own. The 1st respondent issued the said show cause notice in terms of section 20 (1) (b) of the Act within his jurisdiction. The petitioner indulged in making reckless and wild allegations against this respondent. This respondent has no vested interest in the matter to bore grudge against any of the board members of the A.P. State Waqf Board. The said show cause notice was issued while discharging his official functions and duties. The impugned order was issued on the behalf of the 1st respondent in the official capacity of this respondent.

30. The learned Senior Counsel appearing for the 2nd respondent further submits that the term of the board was expired on 11.03.2023. The Government of Andhra Pradesh vide G.O.Ms.No.1, Minorities Welfare (IDM) Department dated 07.03.2023 appointed the Election Authority and other officers for conducting elections for constitution of the A.P. State Waqf Board, Vijayawada. Hence, it can be treated as the cause does not survive in these matters.

31. The learned Senior Counsel appearing for the 2nd respondent also relied upon the following decisions:

1. In the matter of **Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi**[12] reported in 1987 (Supp) Supreme Court Cases 93, it was observed at para Nos. 4 and 5 as follows:

> " 4. The election under challenge relates to 1981, its term expired in 1984 on the dissolution of the Lok Sabha, thereafter another general election was held in December, 1984 and the respondent was again elected from 25th Amethi Constituency to the Lok Sabha. The validity of the election held in 1984 was questioned by means of two separate election petitions and both the petitions have been dismissed. The validity of respondent's election has been upheld in Azhar Hussain v. Rajiv Gandhi, AIR 1986 SC 1253 and Bhagwati Prasad v. Rajiv Gandhi, [1986] 4 SCC 78. Since the impugned election relates to the Lok Sabha which was dissolved in 1984 the respondent's election cannot be set aside in the present proceedings even if the election petition is ulti- mately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of his subsequent election in 1984. Even if we allow the appeal and remit the case to the High Court the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time. In this view grounds raised in the petition for setting aside the election of the respondent have been rendered academic. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in Sun Life Assurance Company of Canada v. Jervis, [1944] AC 111 observed:

[12] 1987 (Supp) Supreme Court Cases 93

" I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue."

These observations are relevant in exercising the appellate jurisdiction of this Court.

5. The main controversy raised in the present appeal regarding setting aside of the respondent's election has become stale and academic, but precious time of the Apex Court was consumed in hearing the appeal at length on account of the present state of law. Section 98 read with Section 99 indicates that once the machinery of the Act is moved by means of an election petition, charges of corrupt practice, if any, raised against the returned candidate must be investigated. On conclusion of the trial if the Court finds that a returned candidate or any of his election agent is guilty of commission of corrupt practice he or his election agent, as the case may be, would be guilty of electoral offence incurring disqualification from contesting any subsequent election for a period of six years. In this state of legal position we had to devote considerable time to the present proceedings as the appellant insisted that even though six years period has elapsed and subsequent election has been held nonetheless if the allegations made by him make out a case of corrupt practice the proceedings should be remanded to the High Court for trial and if after the trial the Court finds him guilty of corrupt practice the respondent should be disqualified. If we were to remand the proceedings to the High Court for trial for holding inquiry into the allegations of corrupt practice, the trial itself may take couple of years, we doubt if any genuine and bona fide evidence could be produced by the parties before the Court. In fact, during the course of hearing the appellant himself stated before us more than once, that it would now be very difficult for him to produce evidence to substantiate the allegations of corrupt practice but nonetheless he insisted for the appeal being heard on merit. Though the matter is stale and academic yet having regard to the present state of law, we had to hear the appeal at length."

2. In the matter of **Om Prakash Jaiswal vs. D.K.Mittal and another**[13] reported in (2000) 3 Supreme Court Cases 171, it was observed at para No. 17 as follows:

> "17. The jurisdiction to punish for contempt is summary but the consequences are serious. That is why the jurisdiction to initiate proceedings in contempt as also the jurisdiction to punish for contempt in spite of a case of contempt having been made out are both discretionary with the court. Contempt generally and criminal contempt certainly is a matter between the court and the alleged contemnor. No one can compel or demand as of right initiation of proceedings for contempt. Certain principles have emerged. A jurisdiction in contempt shall be exercised only on a clear case having been made out. Mere technical contempt may not be taken note of….."

32. The learned Counsel appearing for the 1st respondent also adopted the arguments of the learned counsel for the 2nd respondent.

33. In view of the above said facts and circumstances and upon consideration of the rival contentions, it is to be seen that the petitioner is an Advocate enrolled with the A.P.State Bar Council vide Enrolment No.1231/AP/1991 and practicing before the various courts including the High Court with Computer Code No.13699. The first respondent re-constituted the A.P.State Waqf Board vide G.O.Ms.No.10, dated 26.03.2018 appointing nine members under Section 14(9) and Section 15 of the Waqf Act, 1995 (Central Act

[13] (2000) 3 Supreme Court Cases 171

No.43 of 1995) for a term of five years in which the second respondent was nominated under Section 14(1)(e) and the petitioner was nominated under Section 14(3) r/w Section 14(1)(b)(iii) of the Act. While so the first respondent issued show cause notice under Section 99 of the Waqf Act, 1995 vide Memo No.346415/IDM/A1/2016 dated 03.07.2019 directing to show cause within seven days as to why the Board should not be superseded on the ground that the grave irregularities were noticed by the Government in functioning of the Board. The said show cause notice was served to all the members of the Board including the 2nd respondent and the petitioner as members of the Board. The said show cause notice was challenged by the petitioner and the other board members in W.P.No.8849 of 2019. But the first respondent vide G.O.Ms.No.38, dated 15.07.2019 superseded the board with immediate effect for a period of six months or till the new board was reconstituted whichever is earlier by exercising the power under Section 99 of the Waqf Act, 1995.

34. One Mr.Yousuf Shareef, IFS (Retd) was appointed as competent authority/Special Officer to the AP State Waqf Board vide G.O.Ms.No.39 dated 15.07.2019. The petitioner and two others filed W.P.No.9369 of 2019 to call for the records and quash the

G.O.Ms.Nos.38 and 39 dated 15.07.2019 and to direct the respondents to continue the Waqf board that was constituted as per G.O.Ms.No.10 dated 13.03.2018 till the expiry of its tenure of office of five years i.e., upto March, 2023. There was an interim order suspending the G.O.Ms.Nos.38 and 39 dated 15.07.2019 pending disposal of the writ petition vide order dated 18.07.2019. Similar writ petitions were also filed in W.P.Nos.9369, 9371, and 9465 of 2019. Against the said interim order, the respondents therein preferred W.A.Nos.218, 219 and 224 of 2019 and the same were disposed of on 15.10.2019 directing the appellants therein to file appropriate application for vacation of stay if any along with the reply in detail before the learned single judge within a period of two weeks and on filing such applications, the learned single Judge may consider and decide the same in accordance with law within one month thereafter. The Writ Petition Nos.9369, 9371 and 9465 of 2019 were allowed by a common order dated 24.01.2010 by setting aside the G.O.Ms.Nos.38 and 39 dated 15.07.2019. The first respondent re-constituted the A.P.State Waqf Board by appointing six members in the vacancies of the Board vide G.O.Ms.No.5 dated 15.02.2022 whereas the petitioner and two others were continued as existing members since their term was not over by then.

35. One Mr.Habeebur Rehman claiming to be a social worker filed W.P.No.795 of 2022 questioning the action of the 2nd respondent therein in not disposing of the representation dated 30.09.2021 and not transferring the case of the 3rd respondent for conducting the investigation regarding the grave irregularities and corruption by the members and the Waqf Board etc, which was disposed of at the admission stage on 09.02.2022 directing the 2nd respondent therein to consider the representation of the petitioner dated 30.09.2021 and pass appropriate orders in accordance with law and rules within a period eight weeks from the date of receipt of that order. Then the 1st respondent vide Memo No.1741160/IDM/A1/2022 dated 13.07.2022 issued the impugned show cause notice to the petitioner herein under Section 20(1)(b) of the Waqf Act, 1995 calling for his explanation within 15 days from the date of receipt of the show cause notice on the ground that he acted prejudicial to the interests of the AUQAF.

36. One Mr. Habeeb-ur-Rehman claiming to be the President of Muslim United Front gave representation dated 16.05.2022 to the Chief Secretary, Government of Andhra Pradesh and the Principal Secretary Minority Welfare Department, Government of India to

order for CBCID investigation in the matter of grave irregularities committed in the Waqf Board and for removal of the petitioner as member of the Waqf Board. Similarly one Mr. Kaleel Ahmed submitted a representation to the 2nd respondent dated 30.05.2022 seeking removal of the petitioner as nominated member of the Board since he filed cases against the Government causing huge monetary loss to the Board due to those cases. Petitioner herein filed W.P.No.12854 of 2019 to set aside the notification F.No.05/KAS/AVC/Nlr/2016-DM dated 29.08.2019 of the first respondent as violative of Article 14 of the Constitution of India and the provisions of the Waqf Act, 1995 and the Rules made therein. Upon considering the matter on merits, the said writ petition was allowed on 31.12.2020.

37. The petitioner also filed W.P.No.2706 of 2021 questioning the tender notification No.R1/4Rent/DCB/KNL/2014-Supple dated 18.01.2021 issued by the 2nd respondent therein as ultra vires to the provisions of the Article 14 of the Constitution of India and violative of the provisions of the Waqf Act, 1995 in which there was an interim direction dated 04.02.2021 directing the 2nd respondent therein not to finalise the tenders in respect of the impugned tender notices with a liberty to proceed with the process scheduled to be

held on 04.02.2021 by further directing the second respondent therein not to finalise the tenders in respect of the impugned tender/notices with a liberty to proceed with the tender process scheduled to be held on 04.02.2021. It appears that the said writ petition is pending. Similarly the petitioner also filed W.P.Nos.2859 of 2020, 7528 of 2020, 2758 of 2021 and 2706 of 2021, seeking various reliefs. The first respondent is a party to all the writ petitions.

38. As stated supra, when the W.P.No.24358 of 2022 is pending for consideration which arises against the show cause notice dated 13.07.2022, the petitioner was removed as member of the AP State Waqf Board, Vijayawada with immediate effect by issuing the impugned notification under Section 20(1)(b) of the Waqf Act, 1995 solely on the ground that the petitioner has not submitted any explanation to the said show cause notice dated 13.07.2022. The said impugned GO dated 13.08.2022 was signed by the 2nd respondent representing the first respondent as Secretary to the Government. The said impugned GO was served on the petitioner on 14.08.2022. The gazette notification was given on 17.08.2022.

39. In the pen ultimate paragraph 10 of the impugned GO dated 13.08.2022, it is stated that the Government has examined the

matter keeping in view of the provisions made under Section 20(1)(b) of the Waqf Act, 1995 and removed the petitioner as member of the Board with immediate effect.

40. The entire reading of the impugned GO dated 13.08.2022 does not proceed with the establishment of the allegations against the petitioner to say that he acted prejudicial to the interests of the AUQAF upon conducting any due enquiry. Except mentioning some of the contents of G.O.Ms.No.10 dated 13.03.2018, the orders of the High Court in W.P.No.795 of 2022 dated 09.02.2022, the complaint petition of the President, Muslim Rights and welfare, Vijayawada dated 16.05.2022, the complaint petition of the President, Muslim United Front, dated 16.05.2022, the complaint petition received from Sri Kaleel Ahmed dated 30.05.2022, the Government Memo dated 03.07.2019 and the Government Memo dated 13.07.2022, there was no independent effort to test the veracity of the complaints levelled against the petitioner. Non submission of the explanation within the time by the petitioner for the impugned show cause notice dated 13.07.2022, alone was made the basis for passing the above said impugned removal order. Admittedly, no enquiry was conducted giving due opportunity to the petitioner to participate in the same after serving the adverse

material held against the petitioner by the respondent-Board in order to contest the same by the petitioner and no final report was drawn before passing the impugned Government Order of removal.

41. For the above said purpose, let us see the Section 20(1)(b) of the Waqf Act, 1995 also, which is as follows:

> "20. Removal of Chairperson and members: -
> (1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he –
> (a) Is or becomes subject to any disqualifications specified in Section 16; or
> (b) Refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the auqaf; or
> (c) Fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.
> (2) Where the Chairperson of the Board is removed under sub-section (1), he shall also cease to be a member of the Board."

42. The language of the above said Section is very clear to the effect that "after hearing any explanation that he may offer". It shall be understood carefully that it mandates giving an opportunity to the charged person at every stage by conducting the necessary enquiry before issuing the notification in the official gazette for removal of such person either as a chair person of the Board or member of the Board as the case may be. Mere non-submission of the written explanation within the time stipulated in the show cause notice does

not disentitle the charged member/the petitioner herein from participating in the enquiry to offer his explanation which is otherwise mandatory, but the enquiry itself was not conducted in this case as observed above before passing the impugned removal order. To meet the above said requirement of the Section in toto, the respondent authorities ought to have conducted enquiry even to satisfy the principles of natural justice before taking any final decision in the impugned form. In other words, to say in short, any decision taken in the form of impugned notification should be based on the merits of the case. But the same is lacking in this case as discussed above.

43. Section 14(1)(b)(iii) of the Waqf Act, 1995, is also relevant for the purpose of scaling the eligibility of the petitioner, who was appointed as member of the Waqf Board under G.O.Ms.No.10, dated 13.03.2018.

> "**14. Composition of Board** – (1) The Board for a State and the National Capital Territory of Delhi shall consist of –
>
> (a) …
>
> (b) One and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of-
>
> (i) …
>
> (ii) …
>
> (iii) Muslim members of the Bar Council of the concerned State or Union Territory:
>
> Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union

Territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and.

(iv)…

(c) to (e) …"

44. As per the above said section and it's proviso, it is enough if he is a Senior Muslim Advocate and need not be a designated Senior Muslim Advocate as the language is very clear. It does not require further elaboration as the issues involved in these cases are not about the satisfaction of the requirements of the said Section as they are relating to the issuance of the above said show cause notice dated 13.07.2022 and passing of the above said notification dated 13.08.2022 removing the petitioner as the member of the Waqf Board. Though the term of the Board/the petitioner was over, these writ petitions are decided on merits since they arise against the disciplinary action of the 1st respondent against the petitioner.

45. For the foregoing reasons, the impugned removal order of the petitioner in G.O.Ms.No.30, Minority Welfare (IDM) Department dated 13.08.2022 and consequential gazette notification 17.08.2022 of the 1st respondent are set aside and the petitioner shall be given an opportunity to participate in the enquiry pursuant to the above said show cause notice dated 13.07.2022. The 1st respondent shall cause to furnish all the necessary documents/adverse material sought to be

relied upon against the petitioner to the petitioner within a period of four weeks from the date of receipt of this order if it is to proceed with the enquiry pursuant to the show cause notice dated 13.07.2022. On receipt of the same the petitioner shall submit his explanation along with the supporting documents to substantiate his case within a period of four weeks thereafter. On receipt of such explanation from the petitioner, the 1st respondent shall cause the necessary enquiry by giving due opportunity to the petitioner to participate in the same and the said enquiry shall be concluded as expeditiously as possible within four months thereafter. Subject to the outcome of the final report of the enquiry, appropriate decision shall be taken on its own merits under Section 20(1)(b) of the Waqf Act, 1995.

46. However, it is made clear that the 2nd respondent shall not be associated with the above said disciplinary action that may be continued against the petitioner as indicated above and he shall be kept outside the purview of the above said disciplinary action since the petitioner and the 2nd respondent along with the others received the previous show cause notice dated 03.07.2019 as stated above. That apart, as the petitioner filed various other cases as stated supra in which the 2nd respondent is a party-respondent either in one form

or the other, it is desirable to keep him away from the above said disciplinary action initiated against the petitioner in order to avoid the likelihood of bias and prejudice.

47. Accordingly, the Writ Petitions are disposed of. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand disposed of.

JUSTICE B.KRISHNA MOHAN

July 6, 2023
Note: Lr Copy to be marked
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LMV/UPS

THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION Nos. 26642 and 24358 OF 2022

July 06, 2023

LMV/UPS